United Nations A/HRC/26/24

General Assembly

Distr.: General
29 April 2014

Original: English

Human Rights Council
Twenty-sixth session
Agenda items 2 and 10
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Report on activities undertaken to support efforts by States to promote and protect the rights of persons with disabilities in their national legislation, policies and programmes

Report of the Office of the High Commissioner for Human Rights

Summary

The present study focuses on the activities undertaken by the Office of the High Commissioner for Human Rights, the United Nations Partnership to Promote the Rights of Persons with Disabilities and other relevant United Nations agencies and regional organizations to support efforts by States to promote and protect the rights of persons with disabilities in their national legislation, policies and programmes, including to mainstream disability in development efforts, and suggests a way forward.

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I. Introduction

1. In its resolution 24/31, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report[1] on the activities undertaken by the Office, other relevant United Nations agencies and, where applicable, regional organizations, to support efforts by States to promote and protect the rights of persons with disabilities in their national legislation, policies and programmes, including to mainstream disability in development efforts.[2]

2. To this end, OHCHR invited contributions from all United Nations agencies and regional organizations, and received three responses: two from agencies,[3] namely the International Labour Organization (ILO) and the World Intellectual Property Organization (WIPO), and one from a regional organization, namely the Economic and Social Commission for Asia and the Pacific (ESCAP). OHCHR also consulted separately the technical secretariat of the United Nations Partnership to Promote the Rights of Persons with Disabilities, which is managed by the United Nations Development Programme (UNDP). The full texts of all submissions received are available on the OHCHR website.[4]

II. Technical cooperation on the rights of persons with disabilities

3. The Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on 13 December 2006 and entered into force on 3 May 2008. As of 30 March 2014, it had been ratified by 142 States and the European Union.[5] The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.[6]

4. Technical cooperation is embedded in the spirit and purpose of the Convention. The Convention, and in particular its article 32 – in which States parties recognize the importance of international cooperation in support of national efforts for the realization of the purpose and objectives of the Convention, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities –, serves as a platform for the United Nations to provide technical assistance on issues related to the Convention and its provisions.

5. Important steps to this end have been taken in the context of the post-2015 United Nations development agenda, guided by the High-Level Meeting of the General Assembly

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[1] The present report was prepared by OHCHR in direct consultation with the technical secretariat of the United Nations Partnership on the Rights of Persons with Disabilities and other United Nations agencies and regional organizations. The information compiled herein reflects the available information in the internal reporting system of OHCHR and the contributions from other United Nations agencies.

[2] Human Rights Council resolution 24/31, para. 15.

[3] The term "United Nations agencies" is used in this report as encompassing United Nations departments, programmes, funds and specialized agencies.

[4] www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx.

[5] Updated information on ratification status is available from: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en.

[6] Convention on the Rights of Persons with Disabilities, art. 1, para. 1.

on Disability and Development (23 September 2013). The Meeting's outcome document stresses the importance of ensuring accessibility for and inclusion of persons with disabilities in all aspects of development, with a view to enhancing cooperation and to providing relevant technical assistance to Member States upon their request, and underlines the need to achieve full application and implementation of the international normative framework on disability and development by encouraging the ratification and implementation of the Convention.

6. Technical cooperation is an integral component of the work of OHCHR. Through technical cooperation and advisory services, OHCHR helps in identifying and addressing knowledge and capacity gaps by facilitating constructive dialogue and positive change. Sound and efficient technical cooperation and capacity-building programmes need to be based on thorough understanding and analysis of a specific human rights situation and the multifaceted challenges related to it. This is achieved through independent and credible monitoring activities in cooperation with all relevant stakeholders – allowing OHCHR, in cooperation with relevant stakeholders, to establish needs, to put such needs at the centre of the Office's planning and to identify the most suitable strategies to achieve progress towards results.

7. The response by OHCHR to the requests for technical cooperation and advice, which is guided by the recommendations from treaty bodies and special procedures and from the universal periodic review, has seen a significant increase in recent years, including on the rights of persons with disabilities.

8. Countering discrimination, in particular racial discrimination, discrimination on the grounds of sex, religion and discrimination against others who are marginalized, is one of the thematic priorities in the OHCHR Management Plan 2014-17. Within this framework, the Office works towards increased compliance of national legislation, policies, programmes and institutions with international human rights standards to combat discrimination.

9. Since the adoption of the Convention in 2006, OHCHR has gradually stepped up its work on the rights of persons with disabilities. As part of its technical cooperation and advisory services, the Office supports efforts to ensure ratification of the Convention and compliance of national legislation, policies, programmes and institutions with the Convention and other instruments relevant to the promotion and protection of the rights of persons with disabilities. The Office also seeks to ensure that persons with disabilities claim their rights by supporting efforts to facilitate their use of national protection systems and their participation in public processes. At the international level, OHCHR seeks to ensure that States uphold their human rights obligations by supporting their engagement with the Committee on the Rights of Persons with Disabilities and other relevant human rights mechanisms. Finally, OHCHR also seeks to ensure the integration of a human rights-based approach to disability in policies and programmes of the United Nations, including adequate attention and support to the promotion and protection of the rights of persons with disabilities.

10. In December 2011, six United Nations entities (the International Labour Organization (ILO), OHCHR, the United Nations Children's Fund (UNICEF), the United Nations Department of Economic and Social Affairs (DESA), UNDP and the World Health Organization (WHO)) launched the UN Partnership to Promote the Rights of Persons with Disabilities and the Multi-Donor Trust Fund, administered by the UNDP Multi-Partner Trust Fund Office.[7] The Partnership plays an important role in ensuring the effective use of

[7] See http://mptf.undp.org/factsheet/fund/RPD00.

international human rights mechanisms to promote the human rights of persons with disabilities. The aim of the Fund is to sponsor projects led by United Nations Country Teams to develop the capacities of national stakeholders, particularly governments and organizations of persons with disabilities, for the effective implementation of the Convention, including through promoting disability-inclusive internationally agreed development goals. A first call for proposals launched in May 2012 led to the identification of 11 joint United Nations programmes benefiting a total of 14 countries in multiple areas of Convention implementation. The projects are described below.

11. To ensure adequate coordination and appropriate attention to the promotion and protection of the rights of persons with disabilities, OHCHR has an Advisor on Human Rights and Disability, based in Geneva, in the Human Rights and Economic and Social Issues Section of the Research and Right to Development Division. The Advisor's mandate is broad and includes mainstreaming the rights of persons with disabilities in OHCHR and generally in the United Nations; providing technical assistance to States, National Human Rights Institutions and civil society organizations, and promoting ratification and implementation of the Convention and its Optional Protocol at the national level. His team currently consists of one additional person[8] and has a small amount of extra-budgetary funds to perform its activities. The team provides expert advice to OHCHR field presences and directly to States on demand. The limited availability of resources poses a challenge to advancing the agenda on the rights of persons with disabilities in a coordinated and sustained manner.

12. OHCHR serves as Secretariat of the Committee on the Rights of Persons with Disabilities. The role of the Secretariat, which comes under the Groups in Focus Section of the Human Rights Treaties Division, is to support the Committee in performing its tasks. This treaty body provides, in its concluding observations, substantial guidance to States Parties to the Convention on its implementation and the domestication of its provisions. These recommendations should be a primary source of consultation when providing technical cooperation and assistance, in particular when they refer to legal and policy harmonization. The Committee has, to date, held 11 sessions and reviewed the following 13 countries: Argentina, Australia, Austria, Azerbaijan, Costa Rica, El Salvador, Hungary, Paraguay, the Peoples' Republic of China, Peru, Spain, Sweden and Tunisia.[9] Regarding technical assistance, the Committee is encouraging countries to engage with its members to increase cooperation, in particular, on legal and policy reform and design under the Convention.

13. While not exhaustive, the following sections provide an overview of the type of activities in the area of technical cooperation and advisory services that are supported by OHCHR and/or by relevant international partners at the country and regional levels.

A. Africa

1. Office of the High Commissioner for Human Rights (OHCHR)

14. **Cameroon:** OHCHR has participated in activities aiming at raising awareness among persons with disabilities of their right to participate in political life on an equal basis with others. As a result of the advocacy efforts of OHCHR, an Election Management Body has made polling stations accessible for persons with disabilities during elections in October 2011.

[8] Junior Professional Officer provided by Finland. This position ends in November 2014.

[9] http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRPD.

15. **Côte d'Ivoire**: The Human Rights Division of the United Nations Operation in Côte d'Ivoire has participated actively, through the provision of technical advice, in the Task Force for the ratification of the Convention established by the Confédération des organisations des personnes handicapées de Côte d'Ivoire (COPHCI), a coalition of non-governmental organizations (NGOs) and associations working for the protection and promotion of the rights of persons with disabilities, including efforts to support the Ministry of Justice, Human Rights and Public Liberties. As a result of these joint efforts, Côte d'Ivoire ratified the Convention on 10 January 2014. The Human Rights Division has also widely disseminated the Convention and provided training/briefing sessions for representatives of NGOs specializing in the rights of persons with disabilities, and will continue to support advocacy for the establishment of a coordination mechanism for monitoring the implementation of the Convention.

16. **Ethiopia**: OHCHR organized two disability equality training sessions in cooperation with ILO to support government officials and service providers on the human rights-based approach to disability and the Convention.

17. **Guinea-Bissau**: The Human Rights Section of the United Nations Integrated Peacebuilding Office in Guinea Bissau (UNIOGBIS) supported extensively the signing and ratification of the Convention, holding several meetings to explain the importance of acceding to the Convention and recognizing the treaty body monitoring mechanisms. As a result, the National Popular Assembly signed the Convention and its Optional Protocol in September 2013, with the intention of submitting the two instruments for ratification after general elections in April 2014.

18. **Liberia**: OHCHR supported the National Commission on Disabilities with developing a National Strategy for the Implementation of the Convention in the context of the Agenda for Transformation and the National Human Rights Action Plan, which as a result was validated in September 2013 and launched in December 2013. OHCHR is providing technical assistance through bi-monthly working sessions with members of a Human Rights and Disability Task Force on its roll-out and monitoring. OHCHR is also participating in the coordination of field offices of the United Nations Mission in Liberia to conduct capacity-building activities for government and civil society on evaluating, measuring and monitoring progress on the implementation of the Convention; advocacy and budget monitoring; and applying a human rights-based approach to United Nations programming and national development frameworks. This has contributed to the adoption of (i) human rights and (ii) persons with disabilities and disadvantages as two new cross-cutting themes in the country's second Poverty Reduction Strategy (2013-2017).

19. **Niger**: In order to ensure an improved understanding by the public of national, regional and international norms protecting the rights of persons with disabilities and promote further review, the collective of organizations defending human rights and democracy and the Niger Federation of Persons with Disabilities held awareness-raising activities in March 2013 on the rights of persons with disabilities. The activities were organized in partnership with the OHCHR Human Rights Advisor's unit in Niger and the Ministry of Justice, with funding by UNDP. Awareness-raising campaigns and conferences were organized on national and international legislation on the rights of persons with disabilities in six regions of the country.

20. **Senegal**: During 2013, the OHCHR West Africa Regional Office in partnership with Handicap International and other stakeholders provided technical advice and facilitated training sessions to authorities in relation to the Convention and its Optional Protocol.

21. **Sierra Leone**: The Human Rights Component of the United Nations Integrated Peacebuilding Mission in Sierra Leone (UNIPSIL), in collaboration with OHCHR, supported the Government in the process of drafting a persons with disabilities Act. The

Act constitutes an important step towards the elimination of discrimination against persons with disabilities and the facilitation of their participation and inclusion in society. It contains important provisions on promoting their enjoyment of human rights, particularly the rights to education, employment, health and political participation, and establishes clear responsibilities in eliminating barriers preventing equal access to the physical environment, transport, and services. The Human Rights Component of UNIPSIL also supported the Government in the process of establishing a National Commission for Persons with Disabilities in 2012 and provided support in operationalizing the Commission, including by assisting in the development of its three-year strategic plan and through training and workshops. It is also working on a legislative review given that disability is a prohibited ground of discrimination in the Constitution.[10]

22. **Southern Africa:** The OHCHR Regional Office for Southern Africa, with the support of headquarters, provided the Government, national human rights institutes and civil society organizations, including organizations of persons with disabilities, with the necessary information to conduct an informed and constructive discussion on the need for an African instrument to protect the rights of persons with disabilities to supplement the Convention. The Regional Office has also worked closely with the Secretariat of the African Decade on Persons with Disabilities to strengthen the capacity of organizations of persons with disabilities in the promotion and monitoring of the Convention. The advocacy efforts undertaken by the Regional Office in 2011 led to the ratification of the Convention and its Optional Protocol by Mozambique.

23. **Sudan**: The Human Rights Section of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) carried out intensive work on the Convention with a focus on children with disabilities. The aim of these efforts is to contribute to the creation of a safe, accessible and appropriate academic environment which promotes and protects the rights of children with disabilities. Three workshops were held, aimed at changing policy and practice at school level. They were designed for civil society advocates, union leaders, government officials and local disability advocacy groups, in order to impact State legislation and provide social services that will respect, protect and promote the rights of persons with disabilities.

24. **Uganda**: OHCHR has supported national authorities and civil society organizations in raising awareness on Convention domestication and initial reporting to the Committee. Since 2010, the Office has trained national authorities such as the Equal Opportunities Commission and the National Council for Disabilities, specialized departments in the Ministry of Gender, Labour and Social Development and civil society organizations on Convention protection standards. Further, the Office has supported the Ministry of Health and civil society in the review of the Mental Health Treatment Act by providing a human rights commentary to the Mental Health Bill and convening meetings to discuss elements of the proposed legislation. In 2014-15, with the support of Norwegian funding, OHCHR will continue providing technical assistance to the National Council for Disability on monitoring the implementation of the Convention. To this end, the Office is organizing training on combating discrimination under the Convention for selected district disability councils. In liaison with national authorities, the Office will also undertake a comparative analysis of Ugandan legislation to identify obstacles to realizing the rights of persons with disabilities.

[10] See UNIPSIL/OHCHR, "Moving Forward Together. From National Commitment to Concrete Action", Report on the Rights of Persons with Disabilities in Sierra Leone (2011).

2. United Nations Partnership to Promote the Rights of Persons with Disabilities

25. **Mozambique**: UNDP and UNICEF are employing a twin-track approach involving both targeted and mainstreaming interventions. The work undertaken with the National Institute of Statistics is an example of mainstreaming, whereby indicators on issues related to persons with disabilities will be incorporated in a quarterly national survey to improve data collection as a prerequisite for defining more accurate policies and programmes related to persons with disabilities. On the other hand, the collaboration between UNDP, Handicap International and the Rede de Assistência as Vitimas de Minas is a targeted intervention, which seeks to empower the often marginalized group of mine survivors to claim their rights. One of the activities of the project involves the review of the existing legislative and policy framework.

26. **South Africa**: OHCHR, UNDP and UNICEF are jointly involved with the United Nations Population Fund (UNFPA) and UN Women in a programme that was developed by the United Nations country team in collaboration with the Department of Women, Children and Persons with Disability. The programme aims at establishing a Convention compliant legal and policy framework in South Africa. While UNDP is the lead agency and responsible for the overall coordination and technical support of the programme, UNICEF provides technical expertise on issues related to children with disabilities and OHCHR focuses on international legislation and standards on the rights of persons with disabilities. UNFPA and UN Women will fund efforts to acquire technical expertise on the needs for women with disabilities.

27. **Togo**: The Partnership programme focuses on inclusive education in the Savanes and Kara regions. This joint UNICEF, WHO and OHCHR project started in early 2013. The main legal framework, namely the 2007 Child Code, the 2004 Law on the Social Protection of Persons with Disabilities, and other relevant instruments, such as the 2006 Labour Code and the 1968 Ordinance on the General Statute of Public Servants and strategic documents such as the Education Sector Plan, are being reviewed on their compliance with the international human rights instruments ratified by Togo. Under this programme, Braille and sign language manuals have been developed and tested together with a training manual on inclusive education endorsed by the Ministry of Education in 2012, used for the training of a large number of teachers and administrators. The programme expands on already successful efforts related to the provision of suitable educational opportunities to primary school-aged children with disabilities. This partnership with government and non-governmental organizations will strive to put in place a sustainable collaborative and efficient response to the challenge of providing education for all, including children with disabilities.

B. Asia-Pacific

1. OHCHR

28. **Cambodia**: OHCHR provided technical advice throughout the process of ratification of the Convention, inter alia through translating and publishing the Convention in Khmer and providing support for the drafting of a statement promoting ratification of the Convention, which was presented before Parliament. OHCHR further organized two training sessions for government representatives – on the main features of the Convention and another, more specifically, on reporting under the Convention, with the aim of increasing their awareness on the Government's responsibilities under the Convention.

29. **Papua New Guinea**: OHCHR continues to provide technical support to the Department of Community Development and other relevant government bodies on the implementation and domestication of the Convention.

30. **Timor-Leste:** The Human Rights Adviser's Unit is implementing a capacity development programme for civil society, including for the Timor-Leste Disability Association – a network of more than 20 NGOs working on disability – and its individual members, to increase their use of national and international systems to protect the rights of discriminated groups. The Unit intends to assist organizations of persons with disabilities to strengthen their monitoring, reporting and advocacy skills, and continues to support efforts towards the ratification of the Convention.

2. The Partnership

31. **Cook Islands, Fiji, Vanuatu and Papua New Guinea**: ILO, UNICEF, WHO, ESCAP and United Nations Volunteers are implementing a range of activities with the overall goal of improving the lives and opportunities of persons with disabilities in these selected Pacific Island Countries. The activities are targeted towards assisting with legislative drafting and policy development in countries that have ratified, or are about to ratify, the Convention. The project further promotes employment of persons with disabilities at both policy and programme level – including advocacy to support employers and targeted skills development. Additionally, a pilot project on early detection will provide a strong basis for efforts to be replicated throughout the Pacific. Finally, the lack of reliable data on disability prevalence in the Pacific is addressed through work on statistics, in particular through census and national survey processes. This will draw from global and regional expertise and strengthen ongoing efforts undertaken by the Pacific Statistics Steering Committee. In addition, research will be conducted to explore the barriers to the ratification of the Convention in countries in the region.

32. **Indonesia**: ILO and WHO, together with UNESCO and UNFPA, are implementing a project aimed at strengthening the capacity of the national institutions in charge of coordinating the implementation of the Convention. This initiative supported nationwide high-level policy dialogues with mayors and the creation of a Network of Inclusive Cities, which aims to facilitate the exchange of knowledge and resources on the inclusion of persons with disabilities. Memorandums of understanding have been signed with the governments of Banda Aceh City and Yogyakarta City, with the aim of reaching out to other cities at a later stage. The project has supported the drafting of a framework for identifying key criteria in the process of building inclusive cities for persons with disabilities. The framework has been tested and applied in four cities, resulting in the drafting of strategic plans and the allocation of funds to address the social inclusion of persons with disabilities. These efforts will provide the basis for a yearly appraisal of cities in Indonesia, which is expected eventually to include a disability inclusion award.

33. **Viet Nam** is actively considering ratification of the Convention and ILO Convention No. 159 concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983), and is currently finalizing a national action plan to support persons with disabilities, with the final aim of developing a national legal framework in line with the Convention and other international standards. One of the main objectives of the Partnership funded project is to support the participation of organizations of persons with disabilities in these processes.

C. Americas

1. OHCHR

34. **Colombia**: The Office's efforts focus on Convention domestication and the involvement of authorities in adopting a national policy on persons with disabilities. To this effect, the Government has convened 15 regional meetings with relevant stakeholders and a national meeting, in December 2012. Additionally, with the support of OHCHR, the State

has adopted legislation that provides certain guarantees for the realization of the human rights of persons with disabilities.

35. **Guatemala**: Since 2013, OHCHR has been leading efforts to promote the understanding of the rights of persons with disabilities among government actors.

36. **Haiti**: With the support of OHCHR, the State Secretary on Integration of Disabled Persons has developed a workplan to implement a framework law on persons with disabilities. OHCHR provides technical assistance to the State Secretary on the Integration of Disabled Persons, focusing on (i) raising awareness on universal accessibility and (ii) the harmonization of the Labour Code with the framework law.

37. **Honduras**: OHCHR supported the approval of the National Policy on the Rights of Persons with Disabilities. The Office is also supporting the Ministry of Internal Affairs and Population in the drafting of a National Policy Strategic Plan by hiring a national expert and by directly advising the Directorate General for People for Disabilities, which is in charge of implementing public policies on the rights of persons with disabilities in compliance with international human rights standards.

38. **Mexico:** As a result of advocacy efforts towards the Senate undertaken by OHCHR, UNHCR and the International Organization for Migration, Mexico has withdrawn its two interpretive declarations regarding the Convention. The Office further promoted internal policy and/or legislative changes to remove obstacles hindering the withdrawal of reservations and interpretative declarations.

39. **Paraguay**: The engagement of the National Secretariat for the Human Rights of People with Disabilities (SENADIS) in the implementation of human rights standards and recommendations has increased through its commitment to design a human rights-based public policy on the rights of persons with disabilities and human rights indicators. With technical assistance provided by the OHCHR Human Rights Advisor, SENADIS initiated this process through the collection of baseline material on the situation of persons with disabilities. The material will be further used in a consultative process with government and civil society actors, aimed at designing the policy. The Human Rights Advisor has further supported the State in developing an inter-institutional mechanism to follow up on recommendations made by international human rights mechanisms, including the Committee. These efforts have included the organization of an inter-institutional thematic round table aimed at empowering persons with disabilities to claim their rights.

2. The Partnership

40. **Costa Rica**: ILO and UNDP are collaborating with the Ministry of Labour and social partners to promote the right to work of persons with disabilities. With support from this project, the Costa Rican National Business Association has established a Network of Inclusive Enterprises, which already has a membership of 37 businesses with a total workforce of more than 15,000 employees across Costa Rica. In collaboration with key public sector institutions and civil society organizations, the members of the Network are working to create job opportunities for persons with disabilities and will take steps to make their business processes more inclusive and accessible.

D. Middle East and Northern Africa

1. OHCHR

41. **Libya**: The Human Rights Component of the United Nations Support Mission in Libya has supported the Government with furthering its efforts to ratify the Convention. While the General National Congress has already passed the ratification of the Convention

with a general reservation, the ratification instrument has yet to be deposited. In the aftermath of the 2011 conflict, the General National Congress has also adopted new legislation addressing the rights of persons with disabilities.

42. **Iraq**: A consultation with representatives of persons with disabilities took place in order to discuss necessary amendments to the law on persons with disabilities to bring it in line with the Convention. Human rights officers have undertaken extensive work with the Government of Iraq in partnership with Iraqi organizations of persons with disabilities, civil society organizations and international partners, ensuring ratification of the Convention was part of a National Action Plan adopted by the Government in December 2011 with a view to implementing the recommendations of the universal periodic review conducted in February 2010. As a result of these efforts, Iraq ratified the Convention on 20 March 2013. The United Nations Assistance Mission for Iraq, the Human Rights Parliamentary Committee and the Iraqi Alliance for Disability Organizations have jointly proposed a series of legislative amendments to the Government, particularly in relation to the requirement for an independent mechanism to oversee and monitor its implementation, with a view to aligning Iraqi legislation with the Convention.

43. **Occupied Palestinian territories**: OHCHR has worked closely with the Government of the State of Palestine to produce the Guidance Document on Integrating Human Rights in Palestinian Development Plans, which outlines concrete targets and interventions to be integrated into the Palestinian National Development Plan, the overarching national development framework. This document identifies actions to ensure the rights of persons with disabilities, including the right to education, social security, and work. The Office will work closely with the Government, the NHRI, and NGOs and civil society organizations in monitoring implementation of the National Development Plan from a human rights-based viewpoint, including rights of persons with disabilities as an integral part of this monitoring. The first ever United Nations Development Assistance Framework (UNDAF) for Palestine was also finalized, and the Office played an active role in ensuring that the rights-based approach was central to United Nations development assistance plans. Planned United Nations programmes for persons with disabilities are featured in the Framework.

44. **Tunisia**: OHCHR is promoting the adoption of legislation and policies in compliance with international human rights standards in the area of employment for persons with disabilities. The Office is planning to provide technical assistance through a two-day seminar with members of parliament and five ministerial departments on State obligations regarding persons with disabilities, and five one-day study days with ministerial departments on mainstreaming the rights of persons with disabilities into policies.

2. The Partnership

45. **Occupied Palestinian territories**: ILO, UNDP, UNICEF, WHO, the Food and Agriculture Organization of the United Nations (FAO), UNESCO, UNFPA and WFP have joined their efforts in a programme aimed at raising awareness of the rights of persons with disabilities and developing capacities to mainstream disability in the education, health, employment, and social sectors. The goal of the programme is to enhance respect for the human rights of persons with disabilities through legislation, services, and social and economic empowerment in compliance with the Palestinian Disability Law and the Convention, through a close partnership between relevant ministries, United Nations agencies, international donors, organizations of persons with disabilities and other key stakeholders. On the basis of the above, the programme has three main expected outcomes: (a) review of legislation, policies and practices of six key ministries for their compliance with the Convention and the Palestinian Disability Law; (b) creation of equal opportunities for children with disabilities in selected pilot schools (selected by the Ministry of

Education); and (c) improved access to job creation programmes and business development schemes for women and men with disabilities. Special attention is given to ensuring the full participation of women and girls with disabilities in programme activities.

46. **Tunisia**: The Partnership programme's main objective is the inclusion of persons with disabilities from a human rights perspective, strengthening stakeholders' capacities in advocating, respecting and fulfilling the rights of persons with disabilities and developing a shared new national vision on disability. The programme has four thematic priorities: rights-based advocacy for persons with disabilities; survey, statistics and assessment of social protection mechanisms for persons with disabilities; school inclusion and protection of children with disabilities; and employment of youth with disabilities.

E. Europe and Central Asia

1. OHCHR

47. **Georgia**: In February 2013 OHCHR joined a working group on legislative changes for the development of a social integration strategy for persons with disabilities for 2013-2016. The ratification of the Convention by the Georgian parliament was a result of advocacy efforts undertaken by OHCHR, other United Nations agencies and civil society. The OHCHR Senior Human Rights Advisor supported the Speaker of the parliament and the Head of the Human Rights Committee of the parliament in the process of ratification.

48. **Kosovo**: OHCHR is working on reviewing legislation related to combating discrimination in line with international human rights standards, addressing the issue of discrimination against persons with disabilities when exercising their legal capacity.

49. **Former Yugoslav Republic of Macedonia**: OHCHR contributed to bringing the Convention higher up the national agenda and closer to the rights-holders. The Office promoted ratification of the Convention through bringing key government and disability-related actors together to develop a plan of action towards ratification, using 2009 universal periodic review recommendations and relevant OHCHR thematic studies as a substantive framework. These efforts contributed to the Macedonian ratification of the Convention on 29 December 2011. OHCHR has since continued to provide sustained strategic support for the implementation of the Convention, including through supporting the establishment of a national implementation mechanism in line with article 33 of the Convention, and training its staff, and for the participatory preparation of the State's initial report to the Committee.

50. **Moldova:** As a result of sustained work from 2009 to present, breakthroughs were achieved during the current biennium in laws, government regulations and specific official scenarios (such as segregated school districts) were brought substantially into compliance with relevant international law and standards in the field of non-/anti-discrimination. The creation of a comprehensive anti-discrimination law, for instance, was the result of OHCHR support for government and civil society. Further, the OHCHR Human Rights Adviser worked with government counterparts to develop the Law on the Social Inclusion of Persons with Disabilities, aimed at incorporating the Convention's provisions into domestic legislation. Adopted in 2012, the Law sets out, for the first time, rights to equal legal capacity and reasonable accommodation for persons with disabilities under Moldovan domestic law. Efforts have also focused on the development of school settings inclusive of Roma children and children with disabilities in strategically selected municipalities. OHCHR supported the Ministries of Health, Justice and Labour, Social Protection and Family to establish an inter-ministerial working group to review domestic legislation and policies under article 12 of the Convention, which requires States Parties to move from substituted decision-making to assisted decision-making systems. Activities were fostered to support regulatory and budget amendments to this end. OHCHR also supported, in

cooperation with UNDP and the national human rights institution, the Ministry of Health and other government entities in improving protection of the rights of persons with psychosocial disabilities held in mental institutions, resulting in an agreement to establish an independent institutional complaint review mechanism, namely an Ombudsperson in psychiatric institutions. A pilot Office of the Ombudsperson was created to cover three main psychiatric hospitals.

51. **The Regional office for Europe:** At the regional level, the Regional Office has engaged European Union institutions and member States in the region, particularly on the rights of persons with disabilities. The Regional Office has identified common ground between the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child – namely the issue of independent living for persons with disabilities (article 19 of the Convention on the Rights of Persons with Disabilities) and the issue of alternative care of children. Through its active membership in a coalition of NGO and inter-governmental organization stakeholders representing NGOs and inter-governmental organizations (the European Expert Group on Transition from Institutional to Community-based Care), the Regional Office has contributed significantly to policy changes at the level of the European Union, including policy documents guiding the use of European Union Structural Funds and the regulations for the Structural Funds. These Regulations represent a significant achievement in terms of increased compliance by the European Union with international human rights standards, including the Convention. The Regulations contain specific language on the promotion of transition to community-based services, and include an ex-ante conditionality that will serve as a basis to take measures for the shift from institutional to community-based care, and one to ensure implementation of article 9 of the Convention, in the context of European Structural Funds investments. As a member of the European Expert Group, the Regional Office supported these changes, and provided technical assistance, vis-à-vis relevant officials at European Union and national levels. The Regional Office, moreover, has taken an active role in organizing European Expert Group seminars, in close cooperation with national authorities and the European Commission, on the use of European Union Structural Funds to support the transition from institutional to community-based care. Such events took place in Latvia, Estonia, Hungary, Croatia, Romania, Bulgaria, Slovakia and Poland, and will be organized in the Czech Republic, Lithuania, Slovenia, Greece and Serbia in 2014. The European Regional Office 2012 publication on the implications of article 19 of the Convention for the use of European Union Structural Funds was actively disseminated and used as a tool in raising awareness among European Union officials and national authorities as well as civil society and rights holders. The Regional Office participated in a regional consultation in preparation for the High Level Meeting on Disability and Development, emphasizing the importance of using the Convention as the framework for all European Union input to the High Level Meeting. The final written contribution of the European Union to the High Level Meeting included language proposed by OHCHR and the Regional Office.

52. **The Russian Federation** ratified the Convention in 2012, upon which began a process of amending Russian legislation in accordance with Convention provisions. The establishment of a national implementation and monitoring mechanism as stipulated in the Convention is still under discussion by Russian stakeholders. OHCHR provides technical support and guidance in these processes. Through partnership with OHCHR, the Regional Organization of Persons with Disabilities, Perspektiva, and its partners were able to increase awareness amongst over 400 stakeholders – government officials, education professionals, legislators, organizations of persons with disabilities, civil society organizations and experts, journalists, students, people with disabilities and members of their families – about the Convention, in particular article 24, and current Russian legislation and policies which require amendments. Following advocacy efforts undertaken by OHCHR, a new federal law on education contains language on inclusive education and

equal access to education for all. The law requires regional and city-level administrations to create the necessary conditions for high-quality education without discrimination against persons with disabilities. Federal legislators are currently developing concrete implementation standards for inclusive education, including curricular and infrastructural modifications. Inclusive schools are envisaged in the framework of the "Accessible Environment" State programme. More than 5,000 accessible schools providing conditions for the education of children with disabilities had already been created by the end of 2013. The goal is to create 10,000 such schools by the beginning of 2016.

53. **Serbia**: The Protector of Citizen's Ombudsman's Office and the OHCHR Human Rights Advisor have been successful in influencing the discourse on deinstitutionalization in order for it to include a human rights perspective in line with the norms and standards of the Convention. In 2013, they held two sessions presenting a draft deinstitutionalization road map to local self-governments and representatives of residential institutions, and two high level expert round tables at which national policy in this domain was discussed. By the end of 2013, the draft road map was presented to all relevant stakeholders. The road map, prepared by a national expert group, is to be finalized, endorsed by the Ombudsman's office and officially proposed to the Government in 2014.

54. **Ukraine:** In 2012, Ukraine adopted anti-discrimination legislation improving compliance with the Convention, a requirement contained in recommendations of various United Nations human rights mechanisms. Throughout 2013, OHCHR worked on amendments to the law. An expert discussion focusing on implementing equality and non-discrimination legislation and policies was organized in Ukraine, and a training workshop was held on measuring progress on the implementation of equality and non-discrimination legislation. These activities involved representatives of the Ministries of Justice and Interior, the parliament, the judiciary, NGOs and the Ombudsman's office. Several draft amendments were drawn up, partly addressing the comments of OHCHR and international experts.

2. The Partnership

55. **Moldova**: OHCHR, UNDP, UNICEF and WHO are working closely to bring about catalytic change with regard to rights to equal legal capacities, access to justice, the right to live independently in the community, inclusive education; the strengthening of civil society; and improved monitoring of Convention implementation. As a result of this project, significant advances have been made in establishing justice oversight over previously closed institutions and there is much greater awareness, in Moldovan psychiatry, about Convention provisions. At the same time, policy dialogue has advanced significantly on issues such as legal capacity reform, adult deinstitutionalization and the formal establishment, under the State budget, of an Ombudsperson for Psychiatry. In addition, an NGO of users and survivors of psychiatry was established for the first time in 2013 as a direct result of the project.

56. **Ukraine**: In Ukraine, the rights of persons with disabilities are among the priority areas of a Partnership Framework between the United Nations and the Government (2012-2016). The Partnership-funded programme, developed by UNDP, UNICEF, ILO and WHO in cooperation with the Government and civil society organizations in Ukraine, aims to promote the application of accessibility and universal design standards as enablers of inclusion and participation of persons with disabilities. It focuses on existing barriers that prevent or limit equal access to services and facilities intended for the general public, including law and policy.

F. Technical cooperation undertaken by other United Nations agencies and regional organizations

1. Economic and Social Commission for Asia and the Pacific

57. The past two Asian and Pacific Decades of Disabled Persons (1993-2002 and 2003-2012) and the adoption of the Convention in 2006 acted as catalysts for a shift from a charity-based to a rights-based approach to disability in the Asia-Pacific region. In 2013, the region entered a new phase of promoting the full realization of the rights of persons with disabilities and disability-inclusive development with the adoption of the Ministerial Declaration on the Asian and Pacific Decade of Persons with Disabilities, 2013-2022, and the Incheon Strategy to "Make the Right Real" for Persons with Disabilities in Asia and the Pacific.[11] The Incheon Strategy is a pioneering policy framework derived from the experiences of the ESCAP region and provides the Asian and Pacific region with a set of regionally agreed disability-inclusive development goals.

58. The Working Group on the Asian and Pacific Decade of Persons with Disabilities, an ESCAP consultative and governing mechanism composed of representatives of 15 governments and 15 civil society organizations for, and of, persons with disabilities, met in Incheon, Republic of Korea, to review and adopt a draft road map for the implementation of the Incheon Strategy. ESCAP provided technical assistance in the launch of the Incheon Strategy in a number of countries and in building capacities to develop national strategies and action plans.

59. **Cambodia:** In May 2013, ESCAP provided technical input for the development of a National Disability Strategy by the Government of Cambodia, to align it with the principles of the Convention. Consequently, an Official Launching on Commitment of Implementation of the Convention and the Incheon Strategy and Continuation of National Disability Strategy Plan (2014-2018) took place in Phnom Penh.

60. The ESCAP-Sasakawa Award for Disability-Inclusive Business in Asia and the Pacific[12] has been developed as a good practice for promoting engagement of the private sector in a global effort to eradicate poverty for all, including persons with disabilities. This award is based on a disability-inclusive business model, which views persons with disabilities as an untapped workforce with a range of skills and a market possessing significant purchasing power.

61. In preparing for the Asian and Pacific Conference on Gender Equality and Women's Empowerment: Beijing +20 Review, to be held in Bangkok in November 2014, ESCAP mainstreamed disability concerns into the pre-Conference survey for its member States. This is seen as an opportunity to initiate efforts towards mainstreaming disability in the global process of Beijing+20 and the outcome documents that will result from the process.

62. ESCAP developed a project document in 2013 to support its member States' strengthening of national capacity for better planning of disability-inclusive access and to promote the harmonization of domestic legislation concerning the physical environment, public transport, and information and communication with the Convention, and its implementation. The project, with funding from the Government of China and supported by Hong Kong and Macao, will be implemented in multiple phases starting from 2014.

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[11] The full text of the Incheon Strategy is available online from: www.unescap.org/publications/detail.asp?id=1523.

[12] See www.di-business-award.com.

63. Disability prevalence in Asia and the Pacific is estimated at 4.6 per cent, which is significantly lower than the global estimate of 15 per cent.[13] With a view to addressing this discrepancy, ESCAP is undertaking efforts to gather baseline data to track progress towards achieving the Incheon Strategy. In 2013, ESCAP organized an Expert Group meeting on effective data generation for the Incheon Strategy Indicators. The meeting – attended by experts from national statistical offices and disability focal agencies of 19 countries/territories in the region – identified progress, gaps and capacity-development needs with regard to data collection, and reviewed the draft guidebook on data generation for the Incheon Strategy Indicators, prepared by the ESCAP secretariat. ESCAP will publish a guide on generating data for the Indicators aimed at providing guidance on how to construct and use the Indicators to monitor progress in the implementation of the Strategy, assist its member States to review their existing national statistical systems and develop action plans to collect data for the Incheon Strategy Indicators.

2. International Labour Organization

64. Since 2002, the International Labour Organization (ILO) has provided technical cooperation under a programme funded by the Government of Ireland. Support has been provided in several countries for the review of existing disability specific and general employment legislation from a disability perspective; support for consultations with key stakeholders about the proposed new laws and policies; and technical commentary and support to the dissemination of information about newly adopted laws, where appropriate. Such support has been provided in Botswana, China, Ethiopia, Kenya, Mongolia, , Thailand, Viet Nam, Uganda, the United Republic of Tanzania and Zambia. More recently, in some countries the focus has shifted to supporting implementation of legislation.

65. In the context of these technical cooperation efforts, guidelines on achieving equal employment opportunities for people with disabilities through legislation were developed in 2007 and have been widely distributed in 15 languages. An updated edition is in preparation, for publication in 2014. In addition, a curriculum on disability-related legislation has been developed, with a pilot tested in collaboration with universities in several countries of Asia and Africa, and support provided in introducing disability legislation as a topic in the curricula of law faculties of selected universities, so that future generations of lawyers and judges will be familiarized with disability issues in law.[14]

66. As part of the ILO Disability Inclusion strategy, a pilot project was tested from 2010 to 2012 and is now being rolled out. A range of measures have been undertaken to promote the inclusion of persons with disabilities in ILO technical cooperation projects and in the work of ILO more generally. Inter alia, a checklist of considerations to be borne in mind in including persons with disabilities in technical cooperation projects is available on the ILO technical cooperation website and a "How To" guide providing more detailed guidance is currently under preparation. Practical guides to the inclusion of disability rights considerations in different technical areas have been prepared and made available to ILO staff, along with a knowledge-sharing platform on topics relating to equal opportunities for persons with disabilities. Many ILO manuals in widespread use in technical cooperation projects have been revised to include consideration of the inclusion of persons with disabilities. Advice is provided by ILO disability specialists regarding the inclusion of persons with disabilities in a number of technical cooperation projects. Sensitization of technical cooperation staff and partners to disability rights issues through disability equality

[13] World Health Organization and the World Bank, World Report on Disability (2011).

[14] This curriculum is available in an Education and Training Resource Guide in hard copy, electronically (www.ilo.org/skills/Whatsnew/WCMS_162169/lang--en/index.htm) and in an interactive version (http://disability-employment-legislation.itcilo.org/index.html).

training is increasingly becoming a feature of ILO work to promote consideration of the human rights of persons with disabilities in technical cooperation projects and in the general work of ILO.

67. In addition to support provided to countries in the development of labour legislation, ILO advises constituents on laws relating to the training, employment and social protection of persons with disabilities as part of ongoing work with constituents, including a focus on implementation and enforcement. Capacity-building on disability-related laws, policies, programmes and services is provided in collaboration with the ILO International Training Centre, Turin, Italy.

3. World Intellectual Property Organization

68. The World Intellectual Property Organization (WIPO) has recently started a process of working with Member States at the national level in order to develop the legislative and regulatory framework necessary to ratify and implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired,[15] or Otherwise Print Disabled (Marrakesh VIP Treaty), which was adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities in Marrakesh, on 27 June 2013. The Marrakesh VIP Treaty is the latest addition to the body of international copyright treaties administered by WIPO. It has a clear human rights and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of persons with disabilities. The Treaty's development was motivated in part by the adoption of the Convention, which provides, inter alia, that laws protecting intellectual property must not pose a discriminatory or unreasonable barrier limiting access to cultural materials.[16]

III. Conclusions and recommendations

69. The role of United Nations agencies and regional organizations is crucial in promoting and protecting the rights of persons with disabilities. Using the Convention to its full potential – that is, as a human rights instrument with elements crucial to sustainable development –, United Nations agencies and regional organizations can contribute to legal and policy reform under the specific expertise of their mandates. States are therefore encouraged to strengthen the capacities of the United Nations system, including those of OHCHR, to respond positively to the increasing demands from stakeholders for technical assistance and advisory services at the country level for the ratification of the Convention and its Optional Protocol and for the effective implementation of its provisions.

70. Due to the multifaceted implications of the issues related to the promotion and protection of the rights of persons with disabilities, including the improvement of their living conditions, States and other stakeholders should increase engagement with the United Nations to ensure compliance with international human rights standards in the development of national legislation, policies and programmes. Such engagement should take place through close consultation with, and the active involvement of, persons with disabilities, in full compliance with article 4(3) of the Convention.

71. The United Nations Partnership to Promote the Rights of Persons with Disabilities has proven to be an effective mechanism for increasing technical

[15] www.wipo.int/treaties/en/text.jsp?file_id=301016 (link visited March 4, 2014).

[16] Convention on the Rights of Persons with Disabilities, art. 30.

cooperation in line with the Convention. The ongoing national projects are providing good practices and innovative solutions on legal and policy reform and beyond in the realization of the rights of persons with disabilities. States should consider contributions to the Partnership Multi Donor Trust Fund as a means to facilitate and promote this engagement.

72. **The ongoing shaping of sustainable development goals beyond 2015 constitutes a critical opportunity to develop goals, targets and indicators that address inequalities and that are firmly based in the international human rights framework. In the spirit of building a post-2015 development agenda which ensures accessibility for and inclusion of persons with disabilities and a full realization of their human rights, there is a need to move swiftly towards universal ratification and effective implementation of the Convention and its Optional Protocol. To this end, States should support the involvement of United Nations agencies in capacity-building efforts for duty-bearers and other stakeholders including the business sector, aimed at supporting ratification processes and at implementing legislation and policies on the rights of persons with disabilities in compliance with the Convention.**

73. **Appropriate attention should be given to monitoring the implementation of the Convention at the national and international levels in compliance with the Convention's provisions thereon. The jurisprudence developed by the Committee through its dialogue with States parties provides valuable guidance for technical assistance, and should be used to its full potential. States are further encouraged to request technical assistance on legal and policy reform and design from the Committee, pursuant to article 37 of the Convention. All stakeholders are called upon to support and cooperate with the newly appointed Secretary General Special Envoy on disability and accessibility and any other special procedures mandate or mechanism created to monitor the rights of persons with disabilities.**

United Nations A/HRC/26/25

General Assembly

Distr.: General
5 May 2014

Original: English

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 17/4, the Working Group reviews its strategic objectives, activities and outcomes of the past three years and identifies challenges ahead.

* Late submission.

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I. Introduction

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises was established by the Human Rights Council, through its resolution 17/4, in June 2011. The Working Group has a broad mandate focused on promoting the dissemination and effective and comprehensive implementation of all three pillars of the Guiding Principles on Business and Human Rights for the implementation of the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex). The Working Group is also mandated to guide the annual Forum on Business and Human Rights.

2. This is the third report submitted to the Human Rights Council by the Working Group. It comprises a review of the strategic objectives, activities and outcomes of the first three years and identifies challenges ahead.[1]

II. Strategic considerations and methods of work

3. In its first report to the Human Rights Council (A/HRC/20/29), the Working Group set out strategic considerations and priorities for the implementation of its mandate. Those have informed the Working Group's approach to identifying focus areas and its methods of work for the implementation of its activities. The Working Group's strategic priorities have focused on the dissemination, implementation and embedding of the Guiding Principles.

4. From the outset, the Working Group has noted that the scale and complexity of implementing its mandate required a strategic approach to achieving global dissemination of the Guiding Principles. While the unanimous endorsement of the Guiding Principles by the Human Rights Council signalled a strong global political commitment, targeted efforts were necessary in order to effectively disseminate them worldwide to all stakeholders. Consequently, the Working Group has strived to reach out to new audiences, that is, to reach States and business enterprises that have not previously been engaged in the business and human rights agenda, by organizing and participating in regional and national events; has sought to engage multipliers to disseminate the Guiding Principles to large groups, such as business associations, lawyers' associations and development and sustainability platforms; and has worked with catalysts that focus on developing tools and guidance for stakeholders on the implementation of the Guiding Principles.

5. The Working Group has prioritized efforts towards the effective and comprehensive implementation of the Guiding Principles. That has included engaging decision makers and technical staff in States and business enterprises responsible for the concrete policy commitments leading to the actual implementation of the Guiding Principles. Engagement has also taken place with civil society and national human rights institutions, and with a variety of initiatives at the national, regional and global levels. The Working Group has promoted such efforts wherever possible and appropriate.[2]

6. A further priority for the Working Group has been to maximize the reach of the Guiding Principles by promoting the adoption or embedding of the Guiding Principles in global, regional and national governance bodies. It has done so by engaging with

[1] The report is accompanied by five addenda, containing the outcomes of specific work streams and activities initiated by the Working Group, as well as the reports from the Working Group's country visits to Ghana and the United States of America.

[2] See www.ohchr.org/Documents/Issues/Business/WGActivitiesAndEngagement.pdf.

institutions that are able to play a significant role in requiring, or encouraging, States and business enterprises to implement the Guiding Principles. These include regional intergovernmental organizations, international financial institutions, international employers and labour organizations, United Nations agencies and multi-stakeholder initiatives.

7. The Working Group has periodically revised its methods of work and has regularly published information about its activities and engagement.[3] It has sought to pay particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and to the specific challenges that may be faced by women and men.

III. Key activities, strategic interventions and outcomes

8. Within its mandate and the strategic considerations and priorities referred to in the previous section, the Working Group has engaged in a wide range of activities and projects.[4]

9. The following section contains reflections on some of the Working Group's key activities and strategic interventions, as well as actual or expected outcomes and impacts achieved.

A. National action plans to implement the Guiding Principles

10. National action plans are a common policy tool used by Governments in all regions to set out priorities and programmed actions in specific policy areas. For example, in the Vienna Declaration and Programme of Action (para. 71), the World Conference on Human Rights recommended that "each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights".

11. Throughout its mandate, the Working Group has called on States to develop national action plans as a key tool for effective implementation of the Guiding Principles,[5] while acknowledging that implementing the Guiding Principles can take many forms, and that one size does not fit all.

12. Some Governments have launched national action plans to implement the Guiding Principles,[6] including Denmark,[7] Italy,[8] the Netherlands[9] and the United Kingdom of Great Britain and Northern Ireland,[10] and others are reported to be developing such plans.

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[3] See www.ohchr.org/EN/Issues/Business/Pages/WorkingMethods.aspx.

[4] See www.ohchr.org/EN/Issues/Business/Pages/WGEventsStatements.aspx.

[5] See, for example, A/HRC/23/32, para. 71 (f) and A/HRC/WG.12/6/1, para. 5.

[6] The 2011 corporate social responsibility policy update of the European Commission required the development of national action plans for all European Union Member States. See European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a renewed EU Strategy 2011–14 for Corporate Social Responsibility" (25 October 2011). Available from http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf.

[7] Available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[8] Ibid.

[9] Available from www.globalgovernancewatch.org/docLib/20140212l_dutch-national-action-plan-dec-2013.pdf.

13. While the plans that have been launched to date take different forms, they amount to policy-level documents that outline the commitments and plans of Governments to implement the Guiding Principles at the national[11] and international level, including through foreign policy initiatives. Alongside those developments, some States have initiated processes that, although not labelled formally as national action plans, seek to promote the implementation of the Guiding Principles and highlight the relevance of a number of laws, regulations and policies to business and human rights issues.[12]

14. Achieving actual implementation by States and business enterprises remains the overriding challenge in the business and human rights agenda, as it is in the overall international human rights law regime. At a structural level, a number of impediments need to be overcome to achieve wider and more comprehensive State and business implementation. At the same time, a number of opportunities exist that could bring about more rapid progress. In its first report to the Human Rights Council (A/HRC/20/29), the Working Group identified a number of incentives to implement the Guiding Principles. State incentives include the opportunity to create sustainable and inclusive growth and to address the challenges posed by globalization, such as the expanding reach and impact of business activities and the resulting governance gaps, which have created a perception that Governments are failing to protect the rights of vulnerable persons and ensure accountability. Possible business motivations range from lowering risk and avoiding conflict to improving stakeholder relations and safeguarding productivity. However, the Working Group also noted that current incentive structures were neither inevitable nor fixed, and that they too often led to decisions that were detrimental to the enjoyment of human rights. Recent empirical research by the Institute for Human Rights and Business highlights further a number of such incentives, as well as disincentives, in the "political economy" of States that influence government performance relating to human rights and business.[13] Commonly cited disincentives for States include lack of political will with little voter interest in the subject; a perception of measures around human rights as an economic constraint and cost; conflicts of interest and short-termism; lack of policy coherence between government ministries; and allegations of protectionism. Commonly cited incentives include meeting international legal obligations to protect human rights; providing a more accountable trade–development nexus; providing greater clarity of expectations for business; providing greater clarity for the role of embassies and more effective foreign policy; and competitive advantage within the political economy of the State.[14]

15. The Working Group considers that national action plans can provide a vehicle for tackling disincentives and reinforcing the incentives that are relevant to effective State performance with respect to meeting human rights obligations in the context of business activities in a coherent and comprehensive manner. In particular, such plans:

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[10] Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf.

[11] Several Governments have also developed, or are in the process of developing, plans of action or strategies for corporate social responsibility.

[12] See, for example, United States of America, "U.S. Government approach to business and human rights" (2013), available from http://photos.state.gov/libraries/korea/49271/july_2013/dwoa_USG-Approach-on-Business-and-Human-Rights-updatedJune2013.pdf. See a more comprehensive discussion of the document in A/HRC/26/25/Add.4.

[13] See Institute for Human Rights and Business, *State of Play – Human Rights in the Political Economy of States: Avenues for Application*. Available from www.ihrb.org/pdf/2014-03-18_State-of-Play_HR-Political-Economy-States.pdf.

[14] Ibid., p. 10.

(a) Trigger cross-functional coordination among departments in charge of economic regulation and promotion, foreign policy, human rights and justice within Governments;

(b) May encourage constructive multi-stakeholder dialogue on business and human rights issues that can be complex;

(c) Allow for the identification of concrete national policy and regulatory options for promoting the implementation of all three pillars of the Guiding Principles according to a country's most pressing priorities;

(d) Set agreed processes in motion whereby States, in consultation with business enterprises and civil society, can adjust and review plans over time;

(e) May offer sufficient flexibility to respond to the range of business and human rights challenges that different countries in different geographies may face;

(f) Can provide greater transparency regarding the commitments of States and allow States to exchange best practices and lessons learned;

(g) May, in whatever form they take, offer a common format and language for the implementation of the Guiding Principles that may be conducive to promoting accountability, global alignment, "levelling of the playing field" and coordination among States.

16. The Working Group decided at its seventh session to make national action plans a key strategic priority, noting that many States and other stakeholders have asked for concrete guidance on how to proceed, and drew up a road map to support the development of such plans (A/HRC/WG.12/7/1, para. 5). The road map includes an open consultation on the strategic elements of national action plans in the implementation of the Guiding Principles, held in February 2014; the launch of the online repository on State national action plans;[15] an open e-consultation on a draft set of essential substantive elements and considerations for the development of national action plans; and a State survey to gather an overview of and collect relevant existing practices by Governments.

17. In addition, the road map includes: convening an expert workshop during the eighth session of the Working Group in May 2014 to discuss a draft collection of essential substantive elements that all national action plans should include; engaging with a key initiative to develop tools to support the development of national action plans conducted by the International Corporate Accountability Roundtable and the Danish Institute for Human Rights, through participation in their Latin America and Asia-Pacific dialogue meetings, as well as in a consultation with business representatives;[16] and complementing guidance being developed by stakeholders by producing a guide on the process, substantive content and review of national action plans, to be preliminarily presented at the annual Forum in December 2014, reviewed in 2015 and finalized in 2016 after a pilot period envisaged to begin after the launching of the guide in late 2014.

18. Finally, the Working Group decided to focus on the topic of national action plans in its report for submission to the General Assembly at its sixty-ninth session; in the report the Working Group will provide details of its observations and further reflections on guidance to support national action plans.

19. The Working Group notes that a consensus is emerging with regard to the basic process elements in developing a national plan of action. For example, the process should

[15] See www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[16] See www.business-humanrights.org/Documents/icar-dihr-naps-project.

include meaningful participation and inclusive stakeholder consultation (involving business and civil society) and it should involve a broad cross section of relevant government ministries and agencies, as well as range of different business sectors. Further, any national plan of action should focus on the material issues affecting the population, in particular vulnerable groups, which underlie conflict between business and society.

20. The Working Group also considers that an ongoing review and/or follow-up process, both at the national and international levels, is necessary, and that it must involve civil society. It notes that more expert guidance and analysis of early lessons on the development, review and follow-up of national action plans are needed. The Working Group intends to include reviews of the progress made in the development of national action plans in its annual reports to the Human Rights Council.

21. The understanding of what substantive elements should be included in national action plans is less advanced than the understanding of the process elements. Thus the Working Group considers the identification of and clearer guidance on such components of national action plans to be of critical importance, warranting specific focus in the Working Group consultation in May. Essential substantive elements already emphasized by the Working Group and stakeholders include access to remedy (judicial and non-judicial); public procurement; implementation by publicly owned and controlled enterprises; due diligence requirements for business enterprises, such as in licensing processes, corporate reporting, trade and investment; and development policies and frameworks.

22. The baseline normative expectations are set by the Guiding Principles themselves; the guidance provided by the Working Group will assist States and other relevant actors to unpack the practical implications, as well as any implications on law and policy, to enable more effective implementation. The Working Group looks forward to engaging with States and other stakeholders in this process.

B. Tracking business uptake

23. The potential of the Guiding Principles will not be realized without business enterprises actively engaging in efforts to implement their responsibility to respect human rights, as set out in the Guiding Principles. The Working Group has therefore considered it important to track business uptake of the Guiding Principles and to extend support, where possible, to implementation efforts.

24. In 2012, the Working Group commissioned a pilot corporate questionnaire on business and human rights as a means to seek information on corporate awareness, uptake and implementation of the Guiding Principles.[17] In 2013, the Working Group commissioned another questionnaire as the second phase in the pilot initiative.[18] The objectives of the 2013 questionnaire were to understand the progress in the dissemination of the Guiding Principles among the business community; to highlight the implementation motivations and challenges; and to understand the support that business enterprises need to implement their corporate responsibility to respect human rights.

25. A total of 153 business representatives responded to the 2013 questionnaire, which represents an increase of 23.5 per cent from the 117 businesses representatives that responded to the 2012 questionnaire. The key findings from the 2013 questionnaire include the fact that the majority of the sampled businesses are aware of the Guiding Principles.

[17] See A/HRC/23/32/Add.2. See also www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx.

[18] See A/HRC/26/25/Add.1 for a detailed report of the findings.

However, it should be noted that the respondents do not represent a random sample, and that it is likely that respondents were already familiar with or interested in the business and human rights agenda, having self-selected to complete the survey.

26. The responses indicated that the top human rights priorities of respondents were internal awareness-raising and integration, improving complaints/grievance mechanisms, building accountability in the business for human rights responsibility and (for large enterprises in particular) mapping risks. Further, nearly three in five business enterprises sampled have a public statement of human rights, while 15 per cent of the responding enterprises that do not have a public statement have an internal statement that is not public.

27. The questionnaire responses reveal that corporate responsibility or sustainability departments tend to be leading on human rights within the enterprise. One in two of the sampled business enterprises stated that they were actively engaged in the human rights agenda, including by working on their own policies and practices. In that regard, according to the responses, both internal and external factors/drivers act as motivators to address human rights.

28. With respect to challenges faced, half of the business enterprises sampled highlighted that moving from policy to practice on human rights and addressing human rights in business relationships were their main challenges. When asked about "eco-system support", the most common responses referred to the need for training and educational opportunities, effective government enforcement of local law and multi-stakeholder initiatives. Other responses, although less common, referred to public benchmarking and legal requirements to conduct human rights due diligence.

29. The Working Group wishes to express its thanks to those business enterprises that provided responses and to the International Chamber of Commerce, the International Organisation of Employers, the Global Business Initiative on Human Rights and the University of Denver for conducting the survey. The results and findings of the questionnaire will be used by the Working Group to consider its approach to develop a more detailed mapping of uptake and implementation of the Guiding Principles, to fulfil a need to track awareness and progress in the dissemination of the Guiding Principles and to identify common obstacles to business enterprises implementing the corporate responsibility to respect human rights.

30. The medium-term goal of the Working Group is to enhance the survey methodology. Furthermore, the Working Group intends to seek additional resources to conduct a more extensive survey and build an authoritative repository of information that can help measure progress, both in quantitative and qualitative terms, in business implementation of the Guiding Principles. The assessment of businesses performance is a matter of utmost importance to be considered in the future of the business and human rights field, taking into consideration the emerging performance indicators and reporting frameworks.[19]

31. In this context, the Working Group has lent its support to the Reporting and Assurance Frameworks Initiative and to the Global Reporting Initiative as strategically relevant to its mandate. The Reporting and Assurance Frameworks Initiative is a consultative initiative seeking to develop voluntary public reporting and assurance

[19] See, for example, Damiano de Felice, "Measuring the effectiveness of grievance mechanisms: between key performance indicators and engagement with affected stakeholders", entry published on the Measuring Business & Human Rights website. Available from http://blogs.lse.ac.uk/businesshumanrights/2014/04/11/damiano-de-felice-measuring-the-effectiveness-of-grievance-mechanisms-between-key-performance-indicators-and-engagement-with-affected-stakeholders/.

frameworks based on the Guiding Principles, led by Shift, a non-profit centre for business and human rights, and Mazars, a global audit, accounting and consulting group.[20] The Global Reporting Initiative is a non-profit organization that promotes corporate sustainability reporting through its voluntary reporting framework, including the Sustainability Reporting Guidelines, the latest version of which includes some elements of the Guiding Principles.[21] The Working Group encourages all actors in this field to coordinate their efforts to avoid duplication and build upon each other's work.

C. Exploring options to promote increased access to effective remedy

32. The Guiding Principles recognize the right to an effective remedy for victims of business-related human rights abuses. A central part of the State duty under the Guiding Principles entails ensuring effective access to remedy through judicial and non-judicial mechanisms. Business enterprises that have caused or contributed to adverse impacts should also provide for or cooperate in remediation through legitimate mechanisms, as part of their corporate responsibility to respect human rights.[22]

33. Access to effective remedy has procedural and substantive aspects; that is, it speaks to both mechanisms and outcomes. Grievance mechanisms can take a variety of forms, including criminal and civil judicial mechanisms; administrative mechanisms (that may impose sanctions); mechanisms provided by national human rights institutions (including mediation, adjudicative or semi-adjudicative processes); State-based non-judicial mechanisms, such as the national contact points supporting the OECD Guidelines for Multinational Enterprises; mechanisms linked to international or regional financing institutions; and dialogue-based dispute resolution, including company-level grievance mechanisms. Customary dispute resolution may also play a role in providing remedy for grievances related to business conduct.[23] The remedies provided by judicial and non-judicial mechanisms may take a range of substantive forms. In order to be effective, remedy outcomes should be able to "counteract or make good"[24] any human rights harms that have occurred.

34. The Working Group has continuously sought to identify challenges and lessons learned with regard to the use and effectiveness of judicial and non-judicial mechanisms, including through its country visits and communications, the regional and annual forums and consultations. A key focus has been to explore whether and how non-judicial remedy mechanisms deliver effective remedy.

35. Together with the Corporate Social Responsibility Counsellor of Canada, the Working Group organized an expert workshop in April 2013 to discuss experiences and challenges with non-judicial grievance mechanisms.[25] The Working Group, furthermore, solicited a project from ACCESS Facility, a global non-profit organization focusing on company–community dispute resolution processes, to explore how outcomes can be considered effective.[26] In addition, the Working Group reported on the effectiveness of non-judicial grievance mechanisms for indigenous peoples seeking remedy for business-related human rights abuses and made a number of recommendations in that regard (A/68/279,

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[20] http://shiftproject.org/project/human-rights-reporting-and-assurance-frameworks-initiative-rafi.

[21] See the G4 Sustainability Reporting Guidelines, available from www.globalreporting.org/reporting/g4/Pages/default.aspx.

[22] Guiding principles 22 and 25.

[23] See, for example, A/68/279, paras. 45–47.

[24] See guiding principle 25 and its commentary.

[25] The report from the workshop is included as an addendum to the present report (A/HRC/26/25Add.3).

[26] See www.ohchr.org/EN/Issues/Business/Pages/ActivitiesAndEngagement.aspx.

paras. 32–53). Finally, the Working Group has engaged with experts and civil society organizations working on non-judicial grievance mechanisms, including the Centre for Research on Multinational Corporations (SOMO).

1. Effectiveness of non-judicial grievance mechanisms

36. The Guiding Principles clarify that judicial remedy remains at the core of access to remedy, while non-judicial mechanisms may play complementary and supportive roles. The use of some non-judicial grievance mechanisms, including those linked to international financial institutions, appears to have increased in recent years.[27] This may indicate an increase in awareness or trust among users and their representatives. It may also indicate a paucity of alternative options.

37. Nonetheless, concerns have been raised about the effectiveness of non-judicial grievance mechanisms, relating to both process and outcomes.[28] With regard to process, concerns include allegations of lack of transparency, lack of ability to enforce judgements, dependence on cooperation from the business enterprise, lack of monitoring of compliance with agreed outcomes, lack of capacity on the part of both the mechanism and its users, structural power imbalances that impair victims' ability to effectively represent themselves, lack of access to independent counsel and lack of consultation with victims in designing the mechanisms.[29] Other concerns relate to the inclusion of clauses in the final settlement of the claim that preclude further civil law action by victims against the business enterprise.[30]

38. With regard to outcomes, concerns include the fact that some remedy mechanisms may deliver outcomes that are not rights-compatible, for example in providing types of remedy that are not appropriate to the severity of the harm suffered. Over-reliance on

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[27] See, for example, appendix C of the 2013 annual report of the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation on the caseload of CAO from 2000 to 2013, which indicates an increase in the number of cases handled since the inception of the mechanism, and statistics on the cases handled by national contact points for the OECD Guidelines on Multinational Enterprises, available from http://oecdwatch.org/cases/statistics. See also the 2013 annual report of the European Bank for Reconstruction and Development on its Project Complaint Mechanism (p. 4), which points to a continuing increase in complaints received (available from www.ebrd.com/downloads/integrity/PCM_AR_2013_final.pdf). See further the European Investment Bank Complaint Mechanism Activity Report 2009–2012 (available from www.eib.org/infocentre/publications/all/complaints-mechanism-annual-report-2009-2012.htm), in which it is noted that complaints more than doubled between 2007 and 2012 and that the number of admissible complaints rose by a third between 2009 and 2012.

[28] See "SOMO statement to the UN Regional Forum on Business and Human Rights, Medellín, 28–30 August 2013" (available from www.ohchr.org/Documents/Issues/Business/submissionsColombia/SOMO.pdf) and SOMO, "Grievance mechanisms fail to give workers access to remedy", 31 March 2014 (available from http://somo.nl/news-en/grievance-mechanisms-fail-to-give-workers-access-to-remedy). See also the oral intervention by OECD Watch at the introductory exchange for interested stakeholders with the Working Group, 20 January 2012 (available from http://oecdwatch.org/publications-en/Publication_3742) and the OECD Watch submission to the 2011 Annual Meeting of the National Contact Points (available from http://oecdwatch.org/publications-en/Publication_3693).

[29] For a more detailed discussion of concerns relating to non-judicial grievance mechanisms, see A/HRC/26/25/Add.3.

[30] See, for example, MiningWatch Canada, "International condemnation for Barrick Gold's effort to seek immunity from legal action by rape victims", 6 June 2013 (available from www.miningwatch.ca/news/international-condemnation-barrick-gold-s-effort-seek-immunity-legal-action-rape-victims) and Mines and Communities, "Barrick Gold: North Mara's problematic grievance mechanism", 26 February 2014 (available from www.minesandcommunities.org/article.php?a=12570).

certain types of remedy — in particular, monetary compensation — to the exclusion of other, potentially more transformative outcomes, has also been raised as a concern.

39. The Guiding Principles stipulate effectiveness criteria for non-judicial grievance mechanisms pertaining to both process and outcomes.[31] With respect to process, the Working Group notes that non-judicial grievance mechanisms vary greatly. Not all mechanisms will be appropriate for all types of human rights harm; for example, dialogue-based processes may not be effective or appropriate when used on their own, without parallel judicial proceedings, in cases of serious abuses. However, it would be false to assume that non-judicial grievance mechanisms cannot be effective; most non-judicial grievance mechanisms have the ability to conduct some level of fact-finding and establish the nature of the impact and its causes, and will usually be able to issue instructions or recommendations. Through its consultations and engagements, the Working Group has observed that non-judicial mechanisms can be successful in transforming corporate–community relationships.[32]

40. As stipulated in guiding principle 31 (f), outcomes and remedies must be rights-compatible. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law stipulate that remedy should include: (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms (sect. 11). The Basic Principles further provide that reparations should be proportional to the actual harm caused and should consider restitution, rehabilitation, satisfaction, including disclosure and apologies, and guarantees of non-repetition, in addition to compensation. These criteria are also increasingly considered in the context of abuses that do not amount to gross violations.

41. When applied to specific situations, the Basic Principles will result in a range of outcomes, the elements of which may vary greatly. What constitutes adequate, effective and prompt reparation for harm in the view of the victim will depend on a number of subjective elements, including the personal preferences and circumstances of the victim, the specific harm suffered and the local context and culture. Beyond the Basic Principles, it may thus not be possible to identify common elements of effective remedy outcomes. The Working Group also notes that remedy processes and outcomes are interdependent and intertwined, and that they should be seen in tandem. For example, victims' experience with a process may greatly influence whether they determine the outcome to be satisfactory or rights-compatible. Similarly, the way a mechanism is designed may give preference to certain types of outcomes, for example, monetary compensation. A lack of capacity or perception of bargaining power on the part of victims may also influence perceptions of what constitutes an effective remedy outcome. These circumstances pose challenges in assessing whether a mechanism has provided for remedy that is effective.[33]

42. The Working Group considers that there is a continued need to further document practices of and experiences with non-judicial grievance mechanisms in order to assess the performance of such mechanisms over time in delivering effective remedy, to promote accountability, and to increase learning on how grievances can be most effectively addressed. In particular, more research is needed to establish useful indicators to enable business enterprises, mechanisms, civil society and other stakeholders to evaluate the

[31] See guiding principle 31.

[32] See A/HRC/26/25/Add.3 and A/HRC/26/25/Add.5. See also A/68/279, footnote 37.

[33] Basic Principles, sects. 12 to 23.

effectiveness of processes and outcomes.[34] Also needed is more guidance on evaluating non-judicial grievance mechanisms against the effectiveness criteria of guiding principle 31, in order to assess how different remedy processes are suited to different grievances, as well as ways to improve the performance of such mechanisms.

2. Access to effective judicial remedy

43. The Working Group considers that effective judicial mechanisms are at the core of ensuring access to remedy and that States should take steps to reduce or eliminate legal and practical barriers in that regard.[35] The legal and practical barriers facing victims seeking to bring claims through the courts have been comprehensively documented.[36] Those barriers continue to prevent victims from gaining access to effective remedy. The Working Group encourages States to map current legislation and practices in relation to corporate liability for involvement in human rights abuses, as part of their efforts to implement the Guiding Principles.

44. In terms of the effectiveness of judicial remedy outcomes, the shortage of successful cases and the relatively high number of cases that are settled out of court[37] mean that there is a lack of available information. As noted above, remedy outcomes and processes are interrelated; for example, where victims face lengthy delays in court proceedings, remedy may not be perceived as being effective, even if victims are ultimately successful in obtaining compensation.

45. Towards the end of his mandate, the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, called for further clarification of standards relating to appropriate investigation, punishment and redress where business enterprises cause or contribute to gross human rights abuses, as well as of what constitutes effective, proportionate and dissuasive sanctions in such cases. The Working Group has also reflected on how to approach corporate liability for gross human rights abuses,[38] and in 2013 supported the Office of the United Nations High Commissioner for Human Rights (OHCHR) in commissioning an independent study to examine the effectiveness of domestic judicial

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[34] See A/HRC/26/25/Add.3.

[35] See guiding principle 26 and commentary.

[36] See, for example, A/HRC/11/13/Add.1. In the context of gross human rights abuses, see: Jennifer Zerk, "Corporate liability for gross human rights abuses: towards a fairer and more effective system of domestic law remedies", report prepared for the Office of the United Nations High Commissioner for Human Rights (available from www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyon domesticlawremedies.aspx). See also Amnesty International, *Injustice Incorporated* (London, 2014), available from www.amnesty.org/en/library/asset/POL30/001/2014/en/33454c09-79af-4643-9e8e-1ee8c972e360/pol300012014en.pdf, and Gwynne Skinner et al., *The Third Pillar* (International Corporate Accountability Roundtable et al., 2013), available from http://accountabilityroundtable.org/wp-content/uploads/2013/02/The-Third-Pillar-FINAL.pdf.

[37] Zerk, "Corporate liability", p. 94.

[38] See, for example, the keynote statement by the Working Group at the 2013 Regional Forum on Business and Human Rights for Latin America and the Caribbean, available from www.ohchr.org/Documents/Issues/Business/submissionsColombia/AlexGuaqueta_LACForumopening_speech_en.pdf; the closing statement of the Working Group Chairperson at the 2013 annual Forum on Business and Human Rights, available from www.ohchr.org/Documents/Issues/Business/ForumSession2/Statements/closingChairpersonWGForum2013.pdf; and the Working Group brief on its approach to urgent actions and allegation letters, available from www.ohchr.org/Documents/Issues/Business/WGBrief_Communications_with_States_and_non-State_actors_12.03.2014.pdf.

mechanisms in relation to business involvement in gross human rights abuses, including legal and practical barriers to access to justice.[39]

46. The study found that existing arrangements for preventing, detecting and remedying cases of business involvement in gross human rights abuses are not working well: victims in many cases fail to get effective redress and face numerous legal and practical barriers to effective access to the courts, States face uneven patterns of use of remedial mechanisms, and business enterprises in many cases operate in an environment of significant legal uncertainty. The study recommends that a consultative, multi-stakeholder process be launched, aimed at clarifying key issues of principles and policies, and that a process to identify models of best State practice in relation to the functioning of domestic judicial mechanisms be established. The Working Group supports the recommendation and will be contributing to the process.

3. Discussions on the desirability of an international legal instrument on business and human rights

47. In March 2014, the Working Group participated in a workshop hosted by the Governments of Ecuador and South Africa to explore options for paving the way for a legally binding instrument on business and human rights. As expressed by some stakeholders during the workshop, the underlying assumption behind the formulation of an international treaty is that such an instrument is best positioned: (a) to correct inadequacies in existing bilateral and multilateral investment treaties and arbitration proceedings that settle disputes related to corporate impact, which often do not leave enough space for States to protect their citizens against adverse corporate impact, while protecting the interests of investors; (b) to provide for legal accountability and remedy where transnational corporations are involved in human rights abuses and where States have been reluctant to adopt appropriate prevention and remedy measures; and (c) to provide for a clear division of responsibilities between "home" and "host" States.

48. Those are legitimate expectations. The Working Group understands the impatience on the part of some stakeholders with the pace of implementation of the Guiding Principles, in particular with respect to access to remedy. However, in the view of the Working Group, a careful review should be conducted before embarking on a standard-setting process as to whether and how the factors that impede State implementation of existing international human rights obligations in this space would be overcome by a new international legal instrument on business and human rights. Those discussions should be informed by specific research on the precise nature of existing implementation gaps.

49. The Working Group recalls that the "Protect, Respect and Remedy" Framework and the Guiding Principles are derived directly from existing legal obligations that require States to ensure that human rights are protected against abuse by all business enterprises, including transnational corporations as well as national business enterprises. The Guiding Principles elaborate on the practical implications of those obligations.

50. Great care should be taken to guard against the risk of reversing or undermining the clarity and the regulatory and political momentum gained so far by the "Protect, Respect and Remedy" Framework and the Guiding Principles. The Guiding Principles provide a holistic approach for prevention and redress, a formula that equips stakeholders to tackle the challenges of governance gaps created by globalization, and a platform for multiple and mutually reinforcing avenues to shape corporate conduct via human rights treaties and

[39] See Zerk, "Corporate liability".

market regulation. This is known as the "smart mix" of measures — national and international, mandatory and voluntary — to foster business respect for human rights.

51. Irrespective of whether States choose to pursue the path of an international legally binding instrument, in the view of the Working Group, the international community already has conceptual and practical building blocks in the Guiding Principles that can move practice forward in both the areas of prevention and remedy. Given that any treaty-making process is likely to take a number of years, there is an urgent existing need to address gaps in prevention and access to remedy in the "here and now". One avenue for States would be to develop and implement national action plans with provisions for addressing the legal and practical barriers to access to remedy for victims. Such efforts are urgently needed and will continue to be relevant in the context of a potential legally binding instrument, in order to ensure effective implementation of relevant standards and commitments.

D. Reflections on the annual Forum on Business and Human Rights

1. Annual Forum

52. The first two annual forums on business and human rights, mandated by the Human Rights Council, took place in 2012 and 2013 under the guidance of the Working Group.[40] The forums are the largest global gatherings to date to discuss progress in and challenges with implementing the business and human rights agenda and the Guiding Principles. Each Forum has drawn high numbers of participants: in 2012, close to 1,000 participants from over 80 countries registered, and in 2013, about 1,500 participants from over 100 countries registered. In that respect, the Working Group notes that the Forum has been successful in attracting and maintaining interest from stakeholders globally and including new audiences in shared learning and in policy dialogues.

53. The agendas of the forums focused on taking stock of progress, challenges with respect to implementing the three pillars of the Guiding Principles, and broadening the number of multipliers and catalysts. The Working Group considers that the forums have served those purposes, and have contributed to disseminating lessons learned and good practices on the implementation of the Guiding Principles to a wider audience. Issues that have been discussed include: impacts on particular stakeholder groups, such as children, indigenous peoples and other groups that may be at risk of increased vulnerability to adverse impacts; challenges and practice in specific sectors, such as agribusiness, the extractive sector, the security sector, the financial sector and the information and communications technology sector; and cross-cutting issues such as due diligence, reporting, corporate governance, access to judicial and non-judicial remedy, investment policies, and human rights risks in supply chains.

54. The discussions during the forums indicate the relevance of the Guiding Principles in providing an overarching common foundational framework. A number of States and business enterprises have taken significant steps towards effective implementation of the Guiding Principles, and many civil society organizations are using the Guiding Principles effectively in their advocacy and accountability work. By allowing for the sharing of good practices and the discussion of challenges and information on specific cases, the forums have helped build capacity and awareness among stakeholder groups.

55. With regard to the 2014 Forum, the Working Group has reflected on lessons and trends from the first two forums. For example, the Working Group notes that some of the

[40] All information and documentation related to the 2012 and 2013 annual forums is available from www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx.

discussions during the 2013 Forum were not constructive to engagement across stakeholder groups. The Forum is a space where civil society and affected stakeholders will voice legitimate concerns of urgent and serious human rights abuse involving business enterprises; however, it should also be a space that encourages the sharing of lessons on incremental policy steps and challenges. The Working Group therefore calls on all stakeholders, including States, business enterprises and associations and civil society organizations, to jointly strive to maintain a space for constructive exchange, and to continue to build common understanding of the state of play, current gaps and challenges and ways forward.

56. Another key challenge is the need to enhance the level of business participation in the Forum. Some of the business enterprises that have participated are major economic actors, in terms of size and global reach. Many of those enterprises are also at the forefront of innovating on and implementing the Guiding Principles. However, greater engagement from business is needed to advance in the formulation of solutions, including in relation to remedy. Also, the Guiding Principles need to reach thousands of enterprises across the globe. Raising awareness among the business community of the value of reaching scale in the implementation of the Guiding Principles is a strategic consideration not only for the Forum, but for the wider business and human rights agenda.

57. The Working Group also notes the calls to enhance the participation of victims in the Forum. It remains committed to ensuring that the perspective of victims is represented, and is exploring ways of ensuring effective participation of affected stakeholders through dialogue with civil society organizations. It is worth noting that the second Forum enjoyed high international civil society participation, with that stakeholder group accounting for more than 550 of the registered participants (more than 700, if including academics). While the regular budget of the United Nations funds the travel of 15 participants to the Forum, the Working Group and OHCHR managed to secure additional funds to support the participation of more than 40 representatives of civil society, indigenous peoples, trade unions, other affected stakeholders and academics. Broadening participation to include other civil society groups and more stakeholders who are directly affected by negative corporate behavior, as well as increasing the participation of businesses and of stakeholders from outside of Europe and North America, is important for future forums.

58. While the forums have highlighted progress and challenges across sectors and issues, the Working Group is responding to calls from stakeholders to narrow the thematic focus of the 2014 Forum, to allow for more in-depth discussions around core issues. The 2014 Forum will have a particular focus on national action plans to implement the Guiding Principles, which includes the issue of access to effective judicial and non-judicial remedy. The 2014 Forum will also continue to offer training sessions on the Guiding Principles, single-stakeholder meetings and platforms for sharing tools and examples of practice.

2. Regional Forum

59. In 2012, the Working Group announced its objective of holding regional forums on business and human rights as a way to promote the effective and wide dissemination and implementation of the Guiding Principles. The first Regional Forum on Business and Human Rights for Latin America and the Caribbean, organized by the Working Group in collaboration with the United Nations Development Programme and the Government of Colombia, was held on 28 and 29 August 2013 in Colombia.[41] About 400 people from 27 countries took part.

[41] The summary report of the regional forum is contained in A/HRC/26/25/Add.2.

60. The Regional Forum was successful in bringing together representatives of civil society, business enterprises and government that would have otherwise not engaged with each other in their own local contexts, and in triggering concrete implementation efforts. Since the Regional Forum, the Working Group has conducted follow-up engagements with the Inter-American Commission on Human Rights, the Organization of American States, regional State-based and private organizations in Central America, regional and subregional representatives of United Nations agencies and international organizations, including the International Labour Organization, and representatives from all stakeholder groups in Colombia, Costa Rica, Guatemala and Peru to support concrete implementation efforts.

61. Building on the positive experience, the Working Group is collaborating with the African Union Commission in planning a regional forum to be held in Africa in 2014.The main purpose of the Africa regional forum will be to engage key local actors and stakeholders to promote multi-stakeholder dialogue and cooperation on business and human rights, and identify challenges and opportunities for promoting wide and comprehensive implementation of the Guiding Principles in Africa. The regional forum will offer opportunities for capacity-building on the Guiding Principles, and will seek to reinforce ongoing local efforts and spur new action with regard to preventing and addressing adverse impacts of business activity, as a key foundation for sustainable development and the realization of human rights for all. It will also address issues of particular relevance to the regional context, including the agribusiness and extractive sectors.

E. Advocacy

62. The Working Group considers that an important part of its mandate is to use its public platform to influence relevant stakeholders to affect specific policy change in line with the Guiding Principles, and to bring attention to situations or issues of concern. Some examples of how the Working Group has engaged in advocacy activities are provided below.

63. The Working Group has advocated for the integration of the Guiding Principles in the post-2015 development agenda, together with other mandate holders and through direct outreach. The Working Group considers that the new global development framework needs to reflect the duty of States to establish accountability mechanisms for ensuring and monitoring business respect for human rights, including effective access to remedy mechanisms when adverse impacts occur. As business enterprises are increasingly seen as partners in global development, there is a pressing need to ensure that such efforts are undertaken based on human rights due diligence, and that effective accountability mechanisms are put in place.

64. The Working Group has also issued public statements in relation to specific situations of adverse human rights impacts linked to business activities. For example, in the aftermath of the collapse of the Rana Plaza factory building in Bangladesh, the Working Group issued a press statement urging international clothing brands to work together with the Government of Bangladesh, international organizations and civil society to address working conditions in the garment sector.[42] In follow-up, the Working Group hosted a public discussion on human rights in global garment supply chains to discuss lessons learned from that event with respect to the implementation of the Guiding Principles in

[42] OHCHR, "UN expert body urges international brands to work with Bangladesh to prevent another garment disaster", press release dated 8 May 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13309&LangID=E.

complex global supply chains, including with respect to human rights due diligence and access to remedy for victims.[43]

65. Together with other mandate holders, the Working Group issued a press release to urge the halting of a proposed mega-steel project in eastern India, which would allegedly lead to the displacement of more than 22,000 people.[44]

F. Communications

66. The Working Group is mandated to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights holders.[45] Information has been received through the special procedures communications procedure, through other Working Group activities, for example meetings during country visits, and through the annual and regional forums. The Working Group has used the information to inform its work and strategy, to identify barriers to the effective implementation of the Guiding Principles and gaps in the protection of human rights in the context of business activities and to inform recommendations made to States, business and other actors on the implementation of the Guiding Principles.

67. The Working Group has also sent a number of communications to States and business enterprises, approaching those communications strategically to introduce the core concepts, obligations, responsibilities and expectations set out in the Guiding Principles.[46] The Working Group expresses its thanks to those who bring information to its attention, which is essential to continue to develop a firm understanding of the adverse impacts of business activities on human rights and the key challenges to rights holders in obtaining access to remedy. The Working Group continually revisits its strategy and activities in the light of the information provided, and addresses communications on emblematic cases, where the issues at stake and the rights at risk of infringement can be applied to a number of other similar situations around the world.

68. Within this premise, and over the course of its mandate, the Working Group has sent communications to States and business enterprises across four regions, 16 of which have been made public.[47] The communications, which have been sent jointly with other special procedure mandate holders, have addressed issues ranging from the alleged forced eviction of residents and adverse impacts on human rights linked to the construction of a steel plant to the alleged unaffordability of water and sanitation for vulnerable groups linked to the privatization of water and sanitation services and the alleged negative impact on lowest incomes of rising water costs leading to water poverty.

69. One trend that stands out in the communications received is related to human rights defenders. Communications have addressed alleged murders of, attacks on and acts of intimidation against human rights defenders who campaign against the adverse impacts of extractive company operations and allegations regarding the impact of mining and

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[43] See www.ohchr.org/Documents/Issues/Business/Session5/WGBHR20JunePanelConceptNote.pdf and www.ohchr.org/Documents/Issues/Business/Session5/WG5SessionPanelDiscussion.pdf.

[44] OHCHR, "India: urgent call to halt Odisha mega-steel project amid serious human rights concerns", press release dated 1 October 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E. See also A/HRC/25/74, pp. 16 and 18.

[45] Human Rights Council resolution 17/4, para. 6 (b).

[46] See Working Group brief of March 2014, available from www.ohchr.org/Documents/Issues/Business/WGBrief_Communications_with_States_and_non-State_actors_12.03.2014.pdf.

[47] Ibid. The brief includes a summary of each public communication.

hydroelectric projects on indigenous peoples. The Working Group is gravely concerned about a disturbing increase in attacks and acts of intimidation by State and non-State actors against those who protest against the actual and potential adverse impacts of business operations and major development projects.

70. The Working Group also, together with other special procedure mandate holders, issued a press release linked to a communication.[48]

71. In its communications, and with regard to the State duty to protect, the Working Group has raised questions relating to: the extent to which a State has implemented the Guiding Principles and fulfilled its obligation to protect against human rights violations, including those perpetrated by third parties; what policies and measures have been put in place to ensure that business enterprises respect human rights; and what steps the Government has taken to prevent, investigate, punish and redress human rights abuse within its territory and/or jurisdiction by business enterprises. In relation to large projects, the Working Group has specifically queried the extent to which States have consulted with potentially affected communities and whether any environmental and social impact assessments have been undertaken.

72. The Working Group has also sent communications to home States of business enterprises linked to allegations, and specifically queried what measures the State has taken to prevent, investigate, punish and redress human rights abuse by business enterprises within its territory and/or jurisdiction; what policy, legal, regulatory and/or adjudicatory measures have been taken to encourage or require that business enterprises domiciled in its territory or jurisdiction meet their responsibility to respect human rights throughout their operations; whether guidance has been provided to business enterprises on how to respect human rights throughout their operations; and what judicial, administrative, legislative or other steps have been taken to ensure that victims of business-related human rights abuse by companies domiciled in that State have access to remedy.

73. With regard to the corporate responsibility to respect human rights, the Working Group has queried business enterprises on how they have sought to meet their responsibility to respect human rights as detailed in the Guiding Principles and, more specifically, on how they have sought to identify and assess, including through meaningful consultation with potentially affected groups, any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.

74. Eleven responses to these communications have been received, providing valuable clarifications on the allegations and on the status of understanding and implementation of the Guiding Principles across a range of States and business sectors.[49] In the view of the Working Group, these communications and press releases can be important tools to trigger a response from national authorities and draw the attention of the media, the public and the international community to a situation of concern. The Working Group recalls that the main purpose of the communications procedure is to obtain clarification in response to allegations of violations with a view to ensuring, along with the Government and other stakeholders concerned, the protection of human rights. The Working Group takes this opportunity to thank those who have provided clarification in response to allegations, and urges all to whom the Working Group sends a communication to engage in this procedure.

[48] See footnote 44 above.

[49] All responses are made public in the joint communication reports, available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

G. Capacity-building and guidance on the implementation of the Guiding Principles

75. Over the course of its mandate, the Working Group has received more than 200 requests to provide advice and guidance on the Guiding Principles, to raise awareness and to help initiate processes; the requests have come from all regions of the world and from all stakeholder groups. The Working Group has sought to offer guidance wherever possible within its mandate, capacity and resources, and particularly where it has identified that further clarification on the application of the Guiding Principles is required.

76. Lack of capacity within States, civil society and business enterprises, in particular small and medium-sized enterprises, is a continuing barrier to the effective implementation of the Guiding Principles.[50] In that respect, the Working Group considers that the creation of a global fund to support capacity-building efforts among all stakeholders is a priority for the business and human rights agenda.[51]

77. There has been particular demand for further guidance in the application of the Guiding Principles to the financial sector. The Working Group is co-chairing a process launched by the OECD Working Party on Responsible Business Conduct to develop guidance for the financial sector on the application of the OECD Guidelines for Multinational Enterprises. The process is aimed at producing guidance on key issues, such as due diligence, use of leverage and remedy processes for different parts of the financial sector, through case studies. The Working Group has also provided OECD with guidance on this issue in response to a specific request.[52]

78. The Working Group has participated in meetings and workshops on the Voluntary Principles on Security and Human Rights[53] to provide advice on the alignment of the Voluntary Principles with the Guiding Principles with respect to issues such as due diligence and access to remedy.

79. The Working Group has also explored the issue of "collective" or "cumulative" impacts on human rights, that is, situations where an individual business enterprise's impact may not constitute an adverse human rights impact, but where it is combined with the impacts of other business enterprises in the same sector or region, human rights are adversely affected. To advance the understanding of that issue, the Working Group convened an expert round-table meeting in 2013 to discuss approaches to identifying and managing specific collective impacts, including boom town effects and impacts associated with industrial parks and with collective (over)use of water and land.[54]

80. At the national level, the Working Group has provided guidance and/or technical assistance to State authorities, business enterprises and associations, civil society, indigenous peoples' representatives and other stakeholders, upon request, including by convening or participating in technical workshops and policy discussions. For example, in 2013 the Working Group provided guidance to government officials in Canada on State

[50] See A/HRC/21/21 and Corr.1 and A/HRC/26/25/Add.1.

[51] See the position of the Working Group on a United Nations-linked global fund on business and human rights. Available from www.ohchr.org/EN/Issues/Business/Pages/2014Activities.aspx.

[52] Available from www.ohchr.org/Documents/Issues/Business/LetterResponseToOECD.pdf.

[53] See www.voluntaryprinciples.org/.

[54] Expert meeting convened by the Working Group, 8 May 2013, Atlanta, United States of America; unofficial meeting report available from www.ohchr.org/EN/Issues/Business/Pages/2013Activities.aspx. Outputs from this meeting were also included in a "dilemmas" forum created by the Global Compact Initiative, available from http://human-rights.unglobalcompact.org/dilemmas/cumulative-impacts/#.Uz7B8KiSzGA.

implementation of the Guiding Principles, and provided guidance on aspects of the implementation of the Guiding Principles to academic experts, businesses, civil society and the Canadian Human Rights Commission. The Working Group also provided guidance to stakeholders in Cambodia on the application of the Guiding Principles in the agribusiness sector, through engagement with the Global Compact local network, with the support of OHCHR. In Guatemala, the Working Group provided capacity-building to State authorities, the Chamber of Commerce, the Chamber of Mining, business enterprises, civil society representatives and indigenous peoples' organizations, with the support of OHCHR-Guatemala. The Working Group also engaged in the elaboration by the Council of Europe of a non-binding instrument on business and human rights with a view to addressing gaps in the implementation of the Guiding Principles at the regional level.[55]

81. In its 2013 report to the General Assembly (A/68/279), the Working Group explored the challenges faced in addressing the adverse impacts of business-related activities on the rights of indigenous peoples through the lens of the Guiding Principles. The focus of the report was on how the Guiding Principles could bring clarity to the roles and responsibilities of States, business enterprises and indigenous peoples when addressing those impacts. The Working Group also explored the implications of the State duty to protect, the corporate responsibility to respect, and obligations relating to access to effective remedy in the context of impacts on indigenous peoples, including ways in which indigenous peoples may be particularly vulnerable to adverse human rights impacts from business activities, and identified examples of good practice.

82. The Working Group also participated in the advisory committee on the process of the European Commission to develop voluntary guidelines on the implementation of the Guiding Principles in the oil and gas, employment and recruitment, and information and communications technology sectors.

IV. Looking ahead

83. Pursuant to its mandate to advance in the implementation of the Guiding Principles, the Working Group focused its strategy in 2012–2013 on the dissemination and promotion of their effective and comprehensive implementation. It sought to reach new audiences, multipliers and catalysts, which included State-level and international-level policymakers, business decision makers and civil society organizations. Today there is greater awareness of the Guiding Principles and greater clarity regarding the opportunities for further operationalization within specific industry sectors, regions, issue areas and institutions.

84. At its seventh session, the Working Group decided to prioritize advocacy for and guidance in the formulation and implementation of national action plans and efforts to promote the incorporation of the Guiding Principles into relevant policy frameworks of international institutions. The Working Group will continue to collaborate with OECD to produce further due diligence guidance for the financial sector. In its first report to the Human Rights Council (A/HRC/20/29), the Working Group acknowledged the strategic importance of that sector and the effect it could potentially have in shaping the incentives and disincentives of both business and State actors with regard to human rights. The Working Group also considers multilateral public financial institutions as key actors and encourages the alignment of their social safeguards and grievance mechanisms with the Guiding Principles.

[55] See www.coe.int/t/dghl/standardsetting/hrpolicy/Other_Committees/HR_and_Business/Default_en.asp.

85. Furthermore, the Working Group will continue to prioritize the exploration of practical ways to increase access to judicial and non-judicial remedy. In that respect, the Working Group will provide advice and guidance and facilitate multi-stakeholder dialogues on concrete aspects of effective remedy, including judicial remedy and the issue of corporate accountability and liability.

86. Finally, in the new work stream, "building blocks for a robust human rights regime", the Working Group aims to advocate further the incorporation of the Guiding Principles into the work of international and regional monitoring of bodies, including courts, human rights commissions and United Nations treaty bodies, and processes, such as the universal periodic review, and explore key sub-themes, such as the implementation of the Guiding Principles in conflict zones, opportunities for businesses to contribute to the prevention of harm, and the implication of the Guiding Principles in those contexts for corporate complicity in human rights violations.

87. These priority areas are designed to seek and encourage action to increase the number of States and business enterprises implementing the Guiding Principles. Greater scale is needed to create the political and economic incentives for the concrete implementation of the Guiding Principles. That should be complemented with targeted capacity-building within States — a task that all stakeholders need to continue to carry out.

V. Conclusions and recommendations

A. Conclusions

88. **Significant efforts have been undertaken to implement the Guiding Principles on Business and Human Rights since their endorsement by the Human Rights Council in 2011.**

89. **The Working Group has supported dissemination and implementation efforts by reaching out to new audiences, multipliers and catalysts. It has also contributed to the provision of a space for constructive dialogue on progress and challenges around the implementation of the Guiding Principles, both internationally and regionally; to the construction of a stronger business and human rights regime, including through the development of national action plans on business and human rights; and to the enhancement of the understanding of the notion of effective remedy for adverse human rights impacts linked to business activities.**

90. **A solid and shared understanding of the distinct but complementary duties and responsibilities of States and business enterprises, as well as their practical implications, combined with predictability in implementation and a constructive multi-stakeholder approach, are required to continue the advances made in addressing adverse business-related human rights impacts.**

91. **Despite the significant efforts made to implement the Guiding Principles, key challenges remain, including with respect to broadening dissemination, reaching scale in implementation, building trust between stakeholders and overcoming barriers to effective remedy. There is a growing gap between the pace of implementation and the expectations of civil society and affected stakeholders.**

92. **The Working Group is concerned that the remaining challenges impede progress in the implementation of the Guiding Principles. That poses significant risks to the continued broad-based support for the Guiding Principles, which is crucial for their continued legitimacy as the authoritative global framework for business and human rights. For that reason, the Working Group urges that attention and efforts**

towards the implementation of the Guiding Principles be scaled up in order to more effectively prevent and address adverse business-related human rights impacts.

93. There are no easy solutions for addressing the multifaceted and complex challenges of business and human rights, or for providing the effective remedy and accountability that victims are legitimately seeking as a matter of urgency. Addressing those challenges and effectively managing business-related human rights risks requires sustained attention and a "smart mix" of regulatory and policy approaches and incentives. The Working Group remains committed to playing its part in supporting and, where appropriate, leading those efforts.

B. Recommendations

94. States should:

(a) Include business and human rights issues and efforts to promote the implementation of the Guiding Principles in the universal periodic review process;

(b) Engage with the Working Group in its effort to develop guidance on the process, essential substantive elements and review of national action plans to implement the Guiding Principles, and consider road-testing that guidance and engaging in a process of regular sharing of lessons and peer review with a view to speeding up progress in implementation;

(c) Ensure the protection of human rights defenders who raise awareness of the impacts of business activities, especially large infrastructure and productive development projects, and communicate to business enterprises that they also need to respect the rights of human rights defenders;

(d) Support the process led by the Secretary-General to explore the feasibility of establishing a global fund aimed at addressing the acute capacity gaps and challenges in the area of business and human rights;

(e) Support the process envisaged in the OHCHR-commissioned study on corporate liability for gross human rights abuses to initiate a multi-stakeholder process to clarify key issues of policy and principles, and a process to identify best practice at the State level;

(f) As a matter of priority, review access to remedy for victims of business-related adverse human rights impacts, including legal and practical barriers to accessing courts, and the availability and effectiveness of State-based non-judicial mechanisms;

(g) Provide appropriate public information on the performance of key non-judicial and judicial mechanisms and on the use of administrative sanctions in cases of corporate breaches, and the extent to which they deliver effective remedy in terms of process and outcomes;

(h) Consider the requests of the Working Group for invitations to conduct country visits.

95. Business enterprises should:

(a) Participate in and support the development of national action plans to implement the Guiding Principles;

(b) Encourage industry and multi-stakeholder initiatives on the implementation of the Guiding Principles;

(c) Participate in the annual Forum on Business and Human Rights and other meetings and processes led by the Working Group to support information-sharing of lessons learned on implementation practices and challenges, and engage in the dialogue with other stakeholders on how to promote wider and effective implementation of the Guiding Principles;

(d) Participate in the Working Group-led surveys to measure the level of global uptake of the Guiding Principles;

(e) Report and communicate individually and at the level of business associations on the overall progress in the implementation of the Guiding Principles and on the performance of operational-level grievance mechanisms.

96. Civil society organizations are encouraged to:

(a) Continue to make full use of existing international and regional human rights mechanisms, including the United Nations, its mechanisms and representatives in the field of human rights, to raise business-related human rights issues;

(b) Continue to engage with the Working Group in dialogue and information-sharing on business and human rights challenges through communication in advance of the country visits of the Working Group, participation in the annual Forum and in other meetings and consultation processes led by the Working Group, and regular communication procedures.

United Nations A/HRC/26/25/Add.1

General Assembly

Distr.: General
28 April 2014

Original: English

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Addendum

Uptake of the Guiding Principles on Business and Human Rights: findings from a 2013 questionnaire for corporations*

Summary

This report summarizes the findings from a 2013 questionnaire for corporations on the Guiding Principles on Business and Human Rights. The objectives of the questionnaire were threefold: (1) to understand progress on the dissemination of the Guiding Principles among the business community; (2) to highlight implementation motivations and challenges among business enterprises; and (3) to understand the support that businesses enterprises need to implement their corporate responsibility to respect human rights.

The questionnaire revealed the following key findings:

(a) The majority of the sampled businesses are aware of the Guiding Principles;

(b) Priorities are focused on in-house awareness and integration, improving complaints/grievance mechanisms, building accountability in the business, and (for large companies in particular) mapping risks;

(c) Half of the sampled businesses have a public statement of human rights, yet more transparency is required;

* The summary of the present report is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

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(d) Corporate responsibility/sustainability departments tend to lead on human rights;

(e) Half of the sampled businesses stated that they are actively engaged in the human rights agenda, including by working on their own policies and practices;

(f) Moving from policy to practice on human rights and addressing human rights in business relationships are the main challenges for half of the sampled businesses;

(g) When asked about "eco-system support", the most common responses were: the need for training and educational opportunities, effective government enforcement of local laws and multi-stakeholder initiatives. Other responses, though less common, included public benchmarking and legal requirements to conduct human rights due diligence.

Annex

[English only]

Uptake of the Guiding Principles on Business and Human Rights: findings from a 2013 questionnaire for corporations

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I. Introduction

1. This report summarizes the findings from a 2013 questionnaire for corporations on the Guiding Principles on Business and Human Rights. The questionnaire was carried out for the Working Group by the International Chamber of Commerce (ICC), the International Organisation of Employers (IOE), the Global Business Initiative on Business and Human Rights (GBI) and the University of Denver.

2. The objectives of the questionnaire were threefold: (1) to understand progress on the dissemination of the Guiding Principles among the business community; (2) to highlight implementation motivations and challenges among business enterprises; and (3) to understand the support that businesses enterprises need to implement their corporate responsibility to respect human rights.

3. The aim of this report, which follows on from a pilot survey in 2012,[1] is to gather solid data to support the United Nations and other organizations as they work to disseminate and implement the Guiding Principles. This questionnaire is not an in-depth inquiry or assessment of how companies are progressing with detailed implementation of the Guiding Principles. Instead, it aims to understand how business enterprises are approaching the Guiding Principles and shed light on the motivations, challenges, gaps and opportunities for businesses in implementing the Guiding Principles.

4. One hundred and fifty-three business representatives from 39 countries responded to the questionnaire. This is an increase of 23.5 per cent from the 117 businesses that responded to the 2012 pilot survey. Europe was the region with the highest percentage of overall respondents, at 45.7 per cent. It also provided the most diverse regional sample with perspectives shared from 18 company representatives.

5. The Working Group is using the results and findings from the questionnaire in its wider efforts to map the dissemination and implementation of the Guiding Principles. The questionnaire helps the Working Group to track business awareness of and progress in implementing the Guiding Principles. It also helps it to identify the common obstacles to the fulfilment of "the corporate responsibility to respect human rights" (the second pillar of the Guiding Principles).

6. This questionnaire complements a parallel questionnaire focused on government action regarding "the State duty to protect human rights" (the first pillar of the Guiding Principles).

7. The Working Group welcomes feedback to help it advance the business and human rights agenda within the framework of the Guiding Principles. Please send any feedback to: wg-business@ohchr.org.

II. A note on supporting evidence

8. While the questionnaire did not require supporting or verifiable evidence or data, respondents were given the opportunity to upload or provide links to any internal or external company documents on human rights from their organizations. Information was uploaded by 32 of the 153 companies that participated in the questionnaire. The types of information provided included examples of codes of conduct; supplier codes of conduct;

[1] Results from the 2012 questionnaire for business enterprises can be found at: http://www.ohchr.org/Documents/Issues/Business/ForumSession1/Report_UNWGBusinessSurvey_Dec2012.pdf.

human rights policies/statements; sustainability principles and policies; sustainability/annual reports; a human rights risk assessment; human rights due diligence programmes; human rights management documentation; and human rights event reports.

III. Brief overview of the Guiding Principles on Business and Human Rights

9. The Human Rights Council endorsed the Guiding Principles on Business and Human Rights in June 2011. The Guiding Principles elaborate on the three pillars of the United Nations "Protect, Respect and Remedy" Framework, which the former Special Representative of the Secretary-General proposed to the Human Rights Council in 2008. The three pillars of the Framework are:

(a) The State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication;

(b) The corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing the rights of others and address adverse impacts with which they are involved; and

(c) The need for greater access for victims to effective remedy, both judicial and non-judicial.[2]

10. The endorsement of the Guiding Principles established a common global platform for action. The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. While they are universally applicable, the Guiding Principles recognize that there is no one-size-fits-all approach to how business enterprises meet their corporate responsibility to respect human rights. Specifically the Guiding Principles set out that businesses should have in place:

(a) A policy commitment to meet their responsibility to respect human rights;

(b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and

(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

11. The Guiding Principles stipulate that, in order to conduct effective due diligence, businesses should conduct meaningful engagement with affected stakeholders, implement the results of their impact assessments and take appropriate action, including assigning responsibility for addressing any impacts to the appropriate level and function within the business enterprise. Furthermore, businesses should track the effectiveness of their human rights response using qualitative and quantitative indicators and feedback from stakeholders, and report publicly on how they address their human rights impacts.

[2] See report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises – Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31), available from: http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf.

IV. Methodology

12. This report summarizes the findings from the second corporate questionnaire on the Guiding Principles, which was carried out in 2013, following a pilot survey in 2012. The Working Group aims to undertake a corporate questionnaire every year.

13. The project team analyzed the questions and results from the 2012 questionnaire with a view to improving the design of the 2013 questionnaire, which consequently has different questions and amended answer choices and formats. Year-on-year comparative data cannot therefore be included in the present report, except for the respondent rate. A total of 165 organizations completed the questionnaire. However, 12 of these were deemed ineligible for inclusion as they were business associations and/or NGOs and were therefore not included in the analysis.[3] In total 153 companies responded to the survey, the baseline figure for the analysis.

14. The involvement of GBI, ICC and IOE, three prominent business associations and membership bodies, enabled access to their extensive corporate networks. However, their involvement is not without limitations. Some answers to the questionnaire may be affected by the fact that they are a part of these convening organizations. Where this may be the case, it has been indicated in the text. Furthermore, there is no third-party validation of the information given by respondents to establish the accuracy of fact-based answers to some of the questions.

15. The questionnaire was administered from 29 October 2013 to 31 January 2014 using a custom online tool and the team employed a snowball sampling methodological approach. Snowball sampling relies on the networks that exist between members of a target population. The process starts with an initial "seeding" of the survey, which then gathers size and pace at it disperses through networks. As a sampling methodology, it differs considerably from approaches which involve taking a random sample from a known population, as often used in public opinion surveys.

16. The chief disadvantage of snowball sampling is that it is not as representative of the wider population (in this case global businesses) as a random sampling strategy. It also limits the extent to which the results can be generalized. Furthermore, there is sampling bias due to the reliance on e-mails being forwarded on through networks. For example, people may be more likely to forward the e-mail to contacts they know well, who may share similar traits and characteristics with them, which means the end sample may only represent a subgroup of the wider population.

17. The drawbacks of this method could be minimized by using a range of different "seeds" to start the snowballing process in order to reach a more diverse group of individuals. For the questionnaire, GBI, ICC and IOE leveraged their multiple networks to disperse the survey and, in turn, these networks further circulated the information and the survey link via e-mail to their own networks.

18. In interpreting the results of the study, it is important to note that this is not a representative study offering a snapshot of global business. However, the 153 respondents who participated do constitute a valid sample, obtained in an appropriate manner, and they are able to offer a useful perspective on business and human rights issues. Even so, it is anticipated that respondents were previously familiar with or interested in the business and human rights agenda since they self-selected to complete the survey. In this context

[3] Interest in the questionnaire was shown by non-business constituents. In the future, it may be useful to signpost them from the corporate questionnaire to the parallel surveys being undertaken for other stakeholders by the Working Group.

generalizations are not possible, yet there are a sufficient number of respondents to provide useful insights about a subset of businesses that are familiar with, or interested in, business and human rights.

V. Potential future methodologies

19. Looking ahead to future questionnaires, it is worth considering alternative methodologies. It may be possible to achieve a more representative sample by limiting the population of businesses surveyed. For example, partner organizations may have priority countries, defined by both the size of the national economy and the extent to which human rights are seen as an issue in the country. They may also have priority audiences in terms of company size and sector.

20. More research could be carried out to define a range of company roles/job titles whose incumbents are likely to possess the necessary knowledge to answer on the topics in the survey. The partner organizations (GBI, ICC and IEO) would aim to identify "priority audiences" as opposed to the business world in general. Regarding the methods available to represent the priority audience:

(a) If large businesses are particularly important for an organization, it is a fairly simple exercise to obtain company contact details from the Financial Times Stock Exchange (FTSE) 250, Fortune 500, etc., contact these companies to explain the nature of the research, and ask to be directed to a suitable individual;

(b) In several countries, it is possible to purchase a pre-constructed list of business individuals fitting the target profile (for example, with a suitable job title), with information on sector, business size, etc. also included. From these lists, a sample frame can be constructed that matches the profile of the target audience, and individuals can be selected at random to be approached to take part in the survey.

21. Both approaches are more resource-intensive than snowball sampling, in that they would rely on more than just an initial "seeding" for the survey to reach the target respondents. Selected companies may need to be contacted by telephone as well as e-mail, and respondents given the opportunity to complete the survey in this manner.

22. The effort to represent a more clearly defined target population may also require setting certain quotas (e.g. X per cent of respondents from companies in Y sector) against which progress needs to be monitored. For this reason, specialist third-party research firms may need to be engaged to design and implement such a survey.

VI. Survey structure

23. The 2013 questionnaire included a variety of question types such as multiple choice, yes/no answers, rating of a list of options, and open text boxes requiring more detailed explanations. Participating company representatives were also able to upload or provide links to any internal or external company documents on human rights to share with the Working Group.

24. The questions were grouped into three main sections as follows:

- Section 1: Gathering information on the demographics of respondents, including country location of their company headquarters, location of operations of the respondent, industry sector and size and how the respondent had heard about the questionnaire.

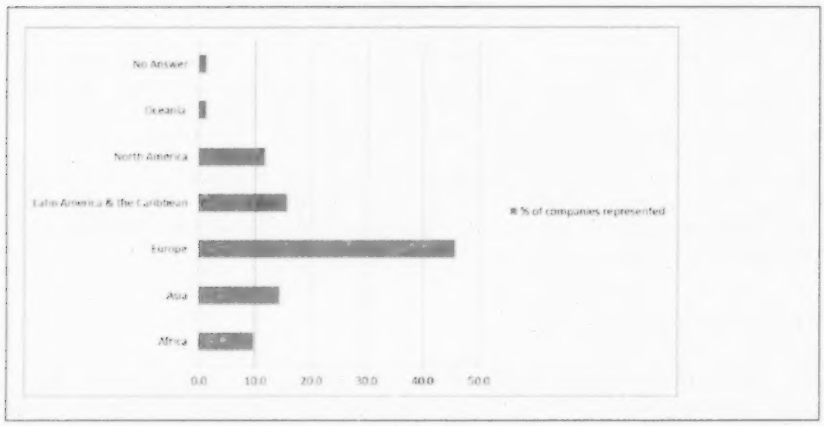
- Section 2: Questions such as whether participants had previously heard of the Guiding Principles (to establish their level of awareness), when they had first heard about the Guiding Principles, and in what contexts they had most frequently heard about the corporate responsibility to respect human rights.
- Section 3: Participants were asked to select their human rights priorities over the following 12 months, to state whether they had a public human rights policy in place, and to identify the department(s) leading the implementation of their human rights policy. Also requested were examples of engagement in activities related to respect for human rights; primary motivators for addressing human rights within their company; challenges in implementing respect for human rights in practice; and productive ecosystem support for taking forward the corporate responsibility to respect human rights.

VII. Survey sample

1. By region and headquarters

25. There were 153 respondents from businesses to the 2013 questionnaire, representing an increase of 23.5 per cent from the 117 who responded to the 2012 questionnaire. At a global level, there were respondents from 39 countries, with Europe the region with the highest percentage of overall respondents (at 45.7 per cent) and the most diverse regional sample, with perspectives shared from 18 company representatives.

Figure 1
Respondent companies (percentage by region)

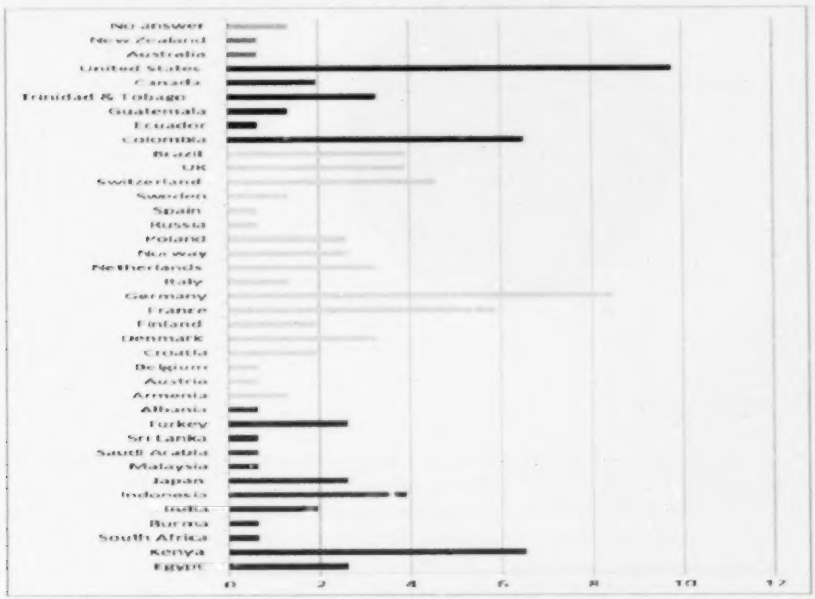


26. Respondents from companies headquartered in the United States of America (9.8 per cent), followed closely by Germany (8.4 per cent), accounted for the highest percentage of respondents by headquarters country of the total of 153 (see Figure 1). Respondents from companies headquartered in Colombia and Kenya (6.5 per cent) were the next largest group, leading the response from the emerging markets. Other countries with notable response rates were companies headquartered in France (5.8 per cent) and Switzerland (4.5 per cent) from developed countries, and Brazil (3.9 per cent) and Indonesia (3.9 per cent) from developing countries. Almost half of the respondent companies (49 per cent) operate in up to 10 different countries. Just under three quarters of the respondent companies (73.85

per cent) operate in 50 countries or fewer. Approximately 4.5 per cent of the 153 companies operate in 150 or more countries.

Figure 2

Questionnaire respondents (by company headquarters country)

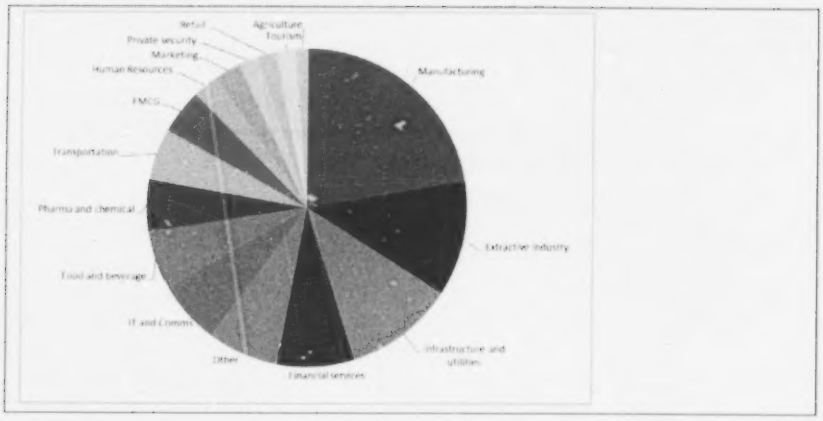


27. The largest number of individual respondents were based in Colombia (9.8 per cent), followed by Germany and the United States (7.19 per cent), although their companies were not based in these countries. While generalizations are not possible, these patterns of participation in the survey may indicate a relatively higher level of discourse on business and human rights in these countries for a variety of factors, such as a proactive civil society or business association engagement on the issues.

2. By sector

28. All listed sectors were represented in the 153 company sample, with the largest percentage of respondents drawn from the manufacturing (22.2 per cent), extractive industries (11.76 per cent) and infrastructure and utilities (11.11 per cent) sectors (see Figure 3). This may reflect the fact that these sectors are closely involved with the business and human rights agenda owing to greater awareness in these industries of their potential or actual negative human rights impacts in comparison with other industries.

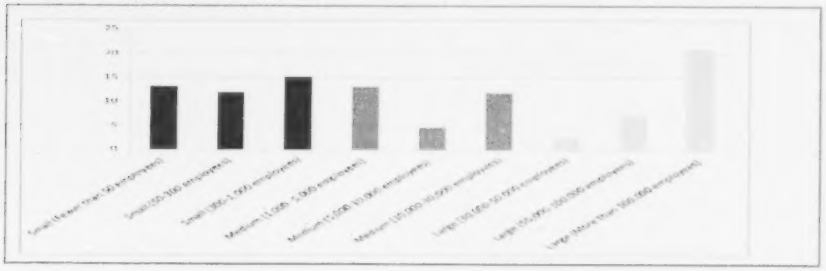
Figure 3
Sample (by company's industry sector)



3. By company size

29. All company sizes were represented in the survey, evenly split between respondents from companies with fewer than 5,000 employees and with more than 5,000. Specifically, 20.9 per cent of respondents were from companies with over 100,000 employees, while at the lower end 13.7 per cent of respondents were from companies that had fewer than 50 employees. The definition of small, medium and large company size was defined prior to the survey as: small = fewer than 1,000; medium = 1,000–30,000; and large = larger than 30,000.

Figure 4
Sample (by respondent's size of business)



4. By source

30. Nearly two in five (37.25 per cent) of respondents had heard about the survey directly from sources other than the collaborating partners (ICC, IOE, GBI and the University of Denver). This suggests that the networks of the collaborating partners played an active role in disseminating the call for participation.

VIII. Key findings

1. The majority of the sampled businesses are aware of the Guiding Principles

31. Awareness of the Guiding Principles and the corporate responsibility to respect human rights is high among this sample group, with three quarters of the 153 respondents having heard of the Guiding Principles. There is clearly a need for further awareness-raising, with approximately a quarter of respondents stating that they had previously been unaware of the Guiding Principles. However, given the limitations of this study, these findings cannot be extrapolated to indicate that they are representative of the entire global business community.

32. Of the 75 per cent of the respondents who had heard of the Guiding Principles, more than half reported that they had heard of them at the time when they were being developed in 2010 or earlier. Notably, just over 20 per cent had heard of the Guiding Principles for the first time in 2012 or 2013, indicating that continued awareness-building activities on the Guiding Principles may be yielding incremental results.

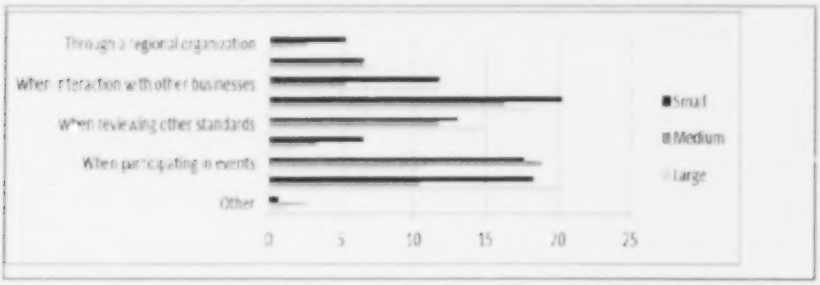
33. When asked about the main mechanisms through which they had heard about the Guiding Principles, the majority of respondents selected: associations or networks; interaction with civil society and participation in events (See Figure 5). In addition to the collaborating partners, those commonly cited by respondents were: United Nations Global Compact, the International Council on Mining and Metals (ICMM), IPIECA (the global oil and gas industry association for environmental and social issues), the Global Reporting Initiative (GRI), the Global e-Sustainability Initiative (GeSI) and the National Business Association of Colombia (ANDI). However it should be noted that, in an example of the limitations of the survey, the databases of an organization such as GBI will be skewed in favour of those companies that have attended GBI-organized events. It is perhaps therefore unsurprising that these mechanisms have scored highly. Nevertheless, it raises the question as to how the Working Group can seek to leverage on and stimulate membership bodies and business associations to further engage their networks on the theme of business and human rights in the future. Additionally, the findings indicate that there is a continued need for engagement with business associations and networks, as well as civil society, to build awareness on business and human rights, through events and other mechanisms.

34. The results point to further scope for cross referencing the Guiding Principles in other relevant standards. For example, 39.87 per cent of respondents noted that they had heard about the Guiding Principles when reviewing other standards, such as the GRI Guidelines, Organisation for Economic Co-operation and Development (OECD) Guidelines and ISO 26000 of the International Organization for Standardization.

35. It is valuable to note that some respondents stated that they were aware of the Guiding Principles because of being asked for information related to them in "requests for proposals", and in the process of tendering for work, as well as from socially responsible investors.

Figure 5

Context where respondents most frequently hear about the corporate responsibility to respect human rights (percentage, by size of business)

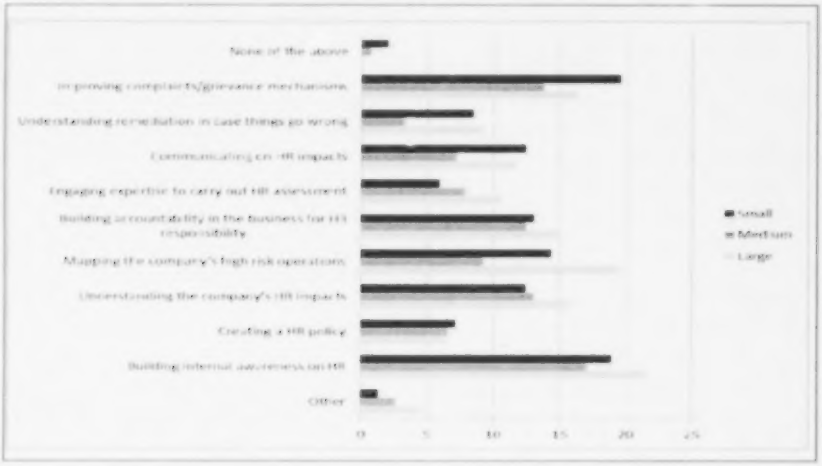


2. Priorities are focused on in-house awareness-raising and integration, improving complaints/grievance mechanisms, building accountability in the business, and (for large companies in particular) mapping risks

36. Survey respondents' top priorities were to build in-house awareness on human rights and improve complaints/grievance mechanisms. Mapping the company's high-risk operations was also identified as a priority. However, the focus on this differed according to company size with, perhaps unsurprisingly, larger companies identifying this as a priority (see Figure 6).

Figure 6

Ranking human rights priorities (percentage, by size of business)



3. Half of the sampled businesses have a public statement of human rights, yet more transparency is required

37. While nearly three in five companies (57.52 per cent) have a public policy statement on human rights, just over two in five respondent companies have yet to create one. This indicates that there is progress still to be made in encouraging companies to establish a

policy commitment. Moreover, of those that do not have a public policy statement, 15 per cent of surveyed companies have an internal policy statement that is not public. Guiding Principle 16 states that: "As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that: (a) is approved at the most senior level of the business enterprise; (b) is informed by relevant internal and/or external expertise; (c) stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (d) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (e) is reflected in operational policies and procedures necessary to embed it throughout the business enterprise."

4. Corporate responsibility/sustainability departments tend to be leading on human rights

38. When asked which department (or departments) leads on the implementation of their company's human rights policy (with the option to select "all that apply"), approximately three quarters of the 88 respondents replied "the corporate responsibility/sustainability department". However, many of the respondents also indicated that multiple departments lead on implementation and half of those who answered indicated that Human Resources are involved. This may be due to the connection between the respect for human rights and labour rights, suggesting a growing awareness of human rights as a cross-cutting issue.

39. Notably, "investor relations" was the department least recognized by respondents as leading the implementation of the company's human rights policy. This suggests a lack of involvement and engagement on the part of investors with regard to human rights, which is contrary to much thinking among the business and human rights/sustainability community. However, this could be explained by ambiguity in the question. For example, even if investors do not lead on the agenda, it does not mean that they do not take relevant action on a regular basis.

5. Half of the sampled businesses stated that they are actively engaged in the human rights agenda, including by working on their own policies and practices

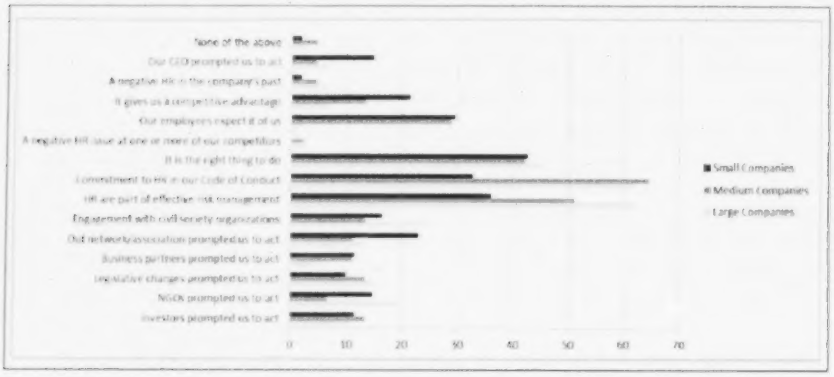
40. More than half of the 153 respondents reported that their company has engaged in activities related to respect for human rights. Examples cited by respondents include: supporting human rights advocacy campaigns; endorsing principles such as the United Nations Global Compact; speaking at third-party events and writing in third-party publications on business and human rights; creating in-house guides on human rights for employees; installing human rights whistleblower systems; undertaking human rights impact assessments, employee capacity building/training on the Guiding Principles, human rights compliance assessments and verification on labour rights; and conducting stakeholder dialogues. However a quarter of respondents said that they have not engaged in a human rights activity and one seventh said that they did not know of any such engagement.

6. Moving from policy to practice on human rights and addressing human rights in business relationships are the main challenges for half of the sampled businesses

41. Respondents were asked to note their companies' three primary motivations for addressing human rights. At an aggregate level, these were: "a commitment to human rights in our code of conduct"; "human rights are part of effective risk management"; and "it is the right thing to do". Overall, these results are consistent with the generally recognized business case for respecting human rights. As a caveat, it is nevertheless worth noting that a limitation of any questionnaire is that people will select what they perceive is the anticipated "right" answer (see Figure 7).

42. In general, these results were the same regardless of the company's size, with the exception of smaller businesses, which placed a lower emphasis on human rights risk management as a motivation and on motivation stemming from a commitment to human rights in their codes of conduct.

Figure 7
Ranking human rights motivators (percentage, by size of business)

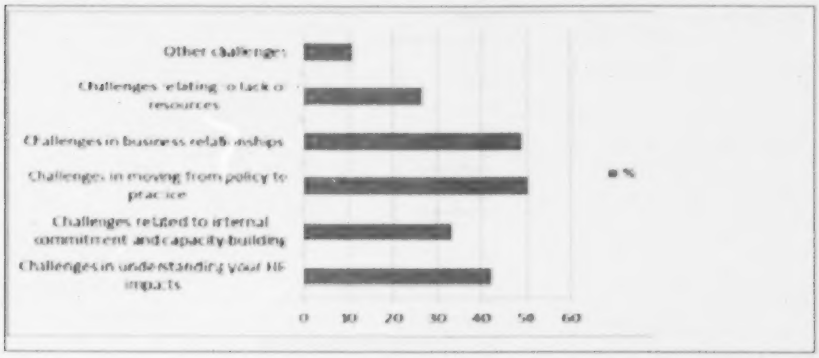

None of the above
Our CEO prompted us to act
A negative HR in the company's past
It gives us a competitive advantage
Our employees expect it of us
A negative HR issue at one or more of our competitors
It is the right thing to do
Commitment to HR in our Code of Conduct
HR are part of effective risk management
Engagement with civil society organizations
Our network/association prompted us to act
Business partners prompted us to act
Legislative changes prompted us to act
NGOs prompted us to act
Investors prompted us to act
0
10
20
30
40
50
60
70
Small Companies
Medium Companies
Large Companies

43. It is interesting to note that few respondents chose the following three options: "a negative human rights issue at one or more of our competitors"; "a negative human rights issue in the company's past"; or "investors prompted us to act". The last of these perhaps indicates a lack of engagement by many investors on the theme of human rights. It could also be a result of allowing respondents to choose only their top three answers to this question. Moreover, the response may depend on who is responding to the survey. Since respondents are unlikely to be board level executives, their perception of the company's motivations may differ from that of the chief executive officer (CEO), who may be more motivated by investor opinion.

44. Nearly half of the 153 respondents said that moving from a policy commitment on human rights to putting this policy into practice was the biggest challenge, closely followed by managing challenges in business relationships (see Figure 8). Nevertheless, for a third of the sampled businesses, there remain challenges in understanding human rights impacts and galvanizing internal commitment and undertaking capacity-building. In addition, a quarter of those sampled cite a lack of resources. With this in mind, it can be inferred that capacity-building support is required to guide companies in the process of understanding their human rights impacts, provide them with training, and shape the internal messaging to get resources allocated to address human rights risks. It should be noted that multiple

respondents stated that they had experienced challenges when considering human rights impacts over which they had limited control but were able to exert influence.

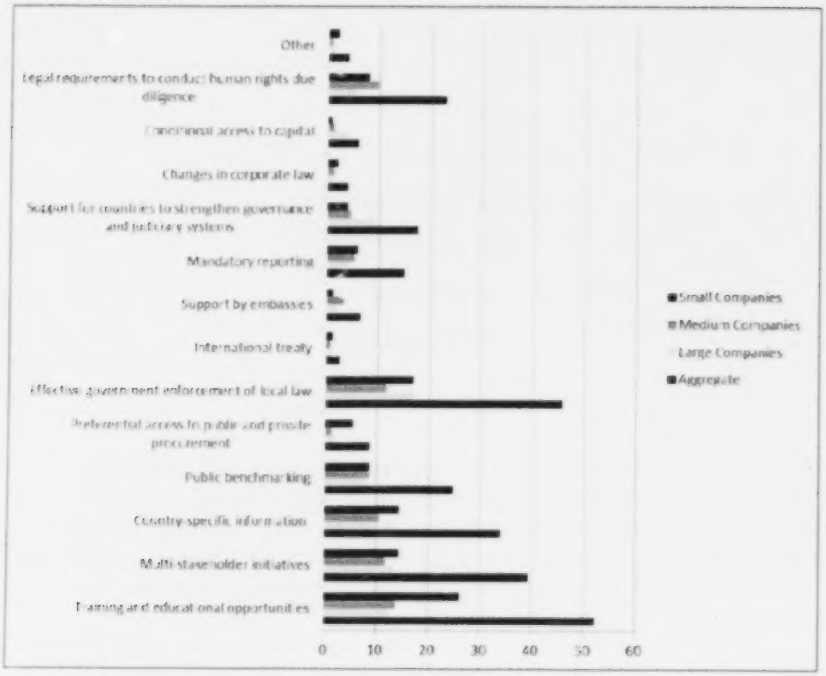
Figure 8
Identifying business challenges (percentage)



7. When asked about "eco-system support", the most common responses were the need for training and educational opportunities, effective government enforcement of local law and multi-stakeholder initiatives. Other responses, although less common, included public benchmarking and legal requirements to conduct human rights due diligence

45. Companies were asked to select the top three areas of support that would be the most productive over the coming years in enabling companies to take forward the corporate responsibility to respect human rights. More than one in two of the respondents identified training and educational opportunities as a top priority for support (see Figure 8). Effective government enforcement of local law received the second highest number of respondents (45.75 per cent), followed by multi-stakeholder initiatives (39.22 per cent). This indicates the critical role of the rule of law in enforcing corporate respect for human rights, as well as the recognition that civil society and other multi-stakeholder initiatives play a role in ensuring that corporations understand and implement their human rights responsibilities. These findings were consistent among different sized companies.

Figure 9
Ranking ecosystem support (percentage, by size of business)



46. A third of the 153 respondents identified the need for greater availability of country-specific information on human rights risks to enable companies to carry out their corporate responsibility to respect human rights. Approximately a quarter of respondents recognized the value of public benchmarking on human rights performance. Just over a fifth acknowledged that legal requirements to conduct human rights due diligence may ensure that companies take forward the corporate responsibility to respect human rights.

47. Notably, a small number of respondents identified mandatory reporting requirements for companies in high-risk countries. This is an interesting finding given discussions about mandatory corporate human rights reporting, notably since the US State Department set requirements for some types of United States company operating in Myanmar after the lifting of economic sanctions.

48. In addition, respondents indicated very low support for "an international treaty on the responsibilities of companies in conflict areas", with only 4 of the 153 companies selecting this option.

IX. Conclusions

49. **This 2013 questionnaire has provided useful insights for the Working Group. In particular, the diversity of participants – in terms of geography, industry sector and size of businesses – indicates the global nature of engagement on human rights by business.**

50. To summarize, for the majority of the 153 sampled businesses, both internal and external factors act as motivators to address human rights, which confirms existing assumptions. There is clear recognition by businesses of their responsibility to respect human rights from a risk management perspective but also because it is the right thing to do. One in two respondents questioned were aware of the Guiding Principles, have a public statement of human rights, and have actively engaged in human rights activity. Yet, while some companies have moved from policy to practice on human rights, doing so remains a major challenge.

51. Despite these useful insights, the small scale of the questionnaire and the fact that it was not randomized has limited the extent to which the results can be extrapolated and generalizations can be made at a global level. The results have therefore underscored the potential value of conducting a larger scale, randomized survey in the future in order to gather a solid baseline of credible and complete data to support the United Nations and other organizations as they continue their work to disseminate and implement the Guiding Principles.

52. Looking ahead, future questionnaires/surveys could take a two-tier approach to gather answers not only from company representatives with an interest in human rights at the management level, but also from CEOs and board level respondents, whose perceptions may differ and add additional value. This could be complemented by an institutional investor survey, given the critical role that this can play in driving corporate behaviour. While the questionnaire featured feedback from respondents from 39 countries, there was a skewed response in favour of European headquartered businesses. Consequently, a regional approach to the survey and/or its dissemination may be of value in achieving a more geographically balanced response in the future. In addition, a more detailed focus on the challenges facing businesses in the implementation of their responsibility to respect human rights may help lead to solutions.

53. The results from this questionnaire will help the Working Group and other business and human rights players to disseminate the Guiding Principles and ensure that corporations meet their responsibility to respect human rights. There is indicative demand for supporting businesses in the provision of business and human rights training and education, in particular for small businesses. Support is also required in the process of building in-house awareness of the business case for human rights, the need to communicate company progress transparently and develop grievance mechanisms. In addition, there may be demand to create learning materials to document good practice on internal and external communications and human rights reporting. Specific training and support could be tailored to the unique needs of smaller businesses, with an emphasis on the creation of human rights codes of conduct. Moreover, further emphasis could be placed on tools to disseminate the Guiding Principles in order to support companies in mapping their human rights risks at a geographical and sector level and in better understanding their indirect human rights impacts.

54. The questionnaire demonstrates the clear business interest and the ability of business associations and networks to stimulate interest in the topic of business and human rights. Approaches that leverage business associations and networks to raise support and continue awareness-raising activities to help ensure that corporations meet their responsibility to respect human rights are of integral strategic value to the Working Group.

55. **The Working Group wishes to thank the companies that completed the questionnaire and the organizations that supported it, namely the Global Business Initiative on Human Rights, the International Chamber of Commerce, the International Organisation of Employers and the Corporations and Human Rights Database Project at the University of Denver.**

56. **All feedback is strongly encouraged and welcome. Please provide any comments that you have on this questionnaire to the Working Group, using the following e-mail address: wg-business@ohchr.org.**

United Nations A/HRC/26/25/Add.2

General Assembly

Distr.: General
24 April 2014
English
Original: Spanish

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Addendum

Report on the First Latin America and Caribbean Regional Forum on Business and Human Rights*

Summary

In November 2012 the Working Group decided that to increase the number of persons, victims, civil society actors, businesses, Governments and regional organizations actively involved in the uptake of the Guiding Principles on Business and Human Rights, Regional Forums would be made an integral part of its working methods. The purpose of these regional gatherings is to identify challenges and best practices and to spur the creation of local networks and capabilities and of forums for dialogue that bring together civil society, Governments and businesses so that they may discover common foundations that will make progress on the uptake of the Guiding Principles possible. The aim of the Regional Forums, moreover, is to encourage local uptake of the Guiding Principles by putting the issue on the agendas of economic and political actors. The Guiding Principles may well be a universal set of guidelines, but implementing them in a particular case requires meeting local needs.

This report covers the major themes and the points of view expressed by participants in the First Latin America and Caribbean Regional Forum on Business and Human Rights,

* The summary of the present report is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

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organized by the Working Group and held on 28 and 29 August 2013 in Medellín (Colombia), in addition to the points of view expressed at the side events of 27 and 30 August, also held in Medellín.[1] The Working Group likewise included information on the organization of the Regional Forum and, so that they may be properly interpreted, on the Guiding Principles. The purpose of this document is to report on implementation and on the debate in the region on the issue of business enterprises and human rights, as expressed by local actors. The Forum agenda, the text of the main statements and the documents submitted by some of the participants can be found on the Working Group's website.[2] Accounts of experiences implementing the Guiding Principles, shared during the Regional Forum, can be found in an appendix to this report.

[1] Fundación Ideas para la Paz provided support for the drafting of this report.

[2] See: http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2013LACRegionalForumBusinessandHumanRightsInfo.aspx.

Anexo

[Español solamente]

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I. Contexto sobre los Foros Regionales

A. Organización y participación del Foro Regional de América Latina y el Caribe

1. El Grupo de Trabajo sobre la cuestión de los derechos humanos y las empresas transnacionales y otras empresas decidió iniciar en América Latina y el Caribe el ciclo de Foros Regionales por varias razones: la región ha sido y continúa siendo escenario de presuntas o probadas violaciones de derechos humanos que involucran a empresas regionales o extranjeras; la región tuvo una baja representación en el primer período de sesiones anual del Foro sobre las empresas y los derechos humanos llevado a cabo en Ginebra en 2012 y se vio conveniente abrir un espacio para escuchar las voces locales; y, por último, el Grupo de Trabajo no tendría en los años 2012 o 2013 una misión de visita oficial a un país de la región, ya que se habían programado otras misiones primero.

2. La organización del Primer Foro Regional tomó más de seis meses y requirió extensas comunicaciones previas, que incluyeron consultas con las misiones ante las Naciones Unidas de los Estados de América Latina y el Caribe, con representantes de la sociedad civil de la región, incluyendo de pueblos indígenas, y con organizaciones empresariales y funcionarios públicos. El Grupo de Trabajo contó con el apoyo del Gobierno de Colombia y de la oficina para América Latina del Programa de las Naciones Unidas para el Desarrollo (PNUD). El Gobierno de Colombia, la gobernación de Antioquia y la alcaldía de Medellín fungieron como sede y anfitriones locales.

3. Estas fueron las sugerencias comunicadas en las consultas realizadas para la organización del Foro Regional:

a) Que el foro diera prelación a las voces locales, es decir, a las organizaciones de la sociedad civil, gobiernos y empresas de la región;

b) Que asistieran multinacionales extrarregionales, y los gobiernos donde residen sus casas matrices, para que pudieran dar información sobre su progreso en la implementación de los Principios Rectores sobre las empresas y los derechos humanos;

c) Que se redoblaran los esfuerzos para tener representantes de empresas de toda la región con el fin de entender el estado de la implementación de los Principios Rectores y de resaltar la importancia de estos ante la comunidad empresarial;

d) Que se incluyeran los siguientes temas:

i) Derechos de pueblos indígenas y el sector extractivo;

ii) Derechos de la mujer;

iii) Iniciativas verdes y el sector agrícola;

iv) Derechos de los niños;

v) Buenas prácticas y retos por parte de empresas y gobiernos;

vi) Los logros de las redes del Pacto Mundial;

vii) Ejemplos exitosos y fallidos de exigencias de debida diligencia en derechos humanos por parte de gobiernos hacia las empresas;

viii) Opciones de regulación nacional para las empresas;

ix) Opciones internacionales para obligar a las empresas e implementar los Principios Rectores y así nivelar globalmente la implementación;

x) Formas para solucionar los obstáculos a una reparación eficaz;

xi) Los problemas de los defensores de derechos humanos en la región y la criminalización de la protesta;

xii) Conexiones entre iniciativas de desarrollo sostenible y la implementación de los Principios Rectores;

c) Que la cuestión de la justicia se abordara de forma constructiva, es decir, que su examen no se circunscribiera a la descripción de patrones de violaciones o al listado conocido de obstáculos por los cuales la justicia en ocasiones no actúa en la región frente a violaciones de derechos humanos por parte de empresas, sino que se avanzara en propuestas para superar los problemas;

f) Que los organizadores del Foro Regional hicieran esfuerzos por involucrar a los gobiernos de toda la región;

g) Que se mantuvieran las reglas de diálogo y participación respetuosos que se usan en los recintos de las Naciones Unidas;

h) Que se abriera, así como se hizo en Ginebra para el período de sesiones anual del Foro en 2012, un espacio previo para tener un diálogo más extenso con víctimas y miembros de la sociedad civil el día antes del Foro Regional;

i) Que se celebraran sesiones paralelas con grupos más pequeños para ahondar en temas específicos de empresas y derechos humanos.

4. Las sugerencias arriba mencionadas influyeron en la organización del Foro Regional. Además de estas sugerencias, el Grupo de Trabajo solicitó a expertos y organizaciones involucradas en la implementación de los Principios Rectores que facilitaran sesiones paralelas y talleres de capacitación sobre: los Principios Rectores en general; la implementación de los Principios Rectores en contextos de pueblos indígenas; mecanismos de reparación eficaces; tendencias sobre reporte y auditoría; y herramientas de implementación de los Principios Rectores para la sociedad civil. El Gobierno de Colombia y el PNUD organizaron sesiones paralelas sobre prácticas nacionales e iniciativas del PNUD relacionadas con los Principios Rectores.

B. Comentarios sobre el Foro Regional

5. Muchos de los actores que asistieron al Foro Regional expresaron su apoyo al evento y acogieron con entusiasmo la oportunidad de tener una plataforma neutral para reunir personas, organismos y organizaciones que rutinariamente no tienen un espacio común para discutir la cuestión sobre empresas y derechos humanos[a].

6. Algunas organizaciones de la sociedad civil expresaron que el formato del Foro Regional dificultaba la participación de los asistentes y que, en su visión, el Foro trató sobre la responsabilidad social empresarial y no sobre el respeto a los derechos humanos y que, por lo tanto, constituía una forma de distorsionar los tratados internacionales de derechos humanos. Estas organizaciones hubieran querido ver menos empresas y menos representantes de los organismos de las Naciones Unidas en los paneles sustantivos. El Grupo de Trabajo emitió respuestas a estas cartas en septiembre y octubre de 2013[b].

[a] Algunos intercambios se dieron por correspondencia escrita; ver www.ohchr.org/EN/Issues/Business/Forum/Pages/2013LACRegionalForum1HRStatements.aspx.

[b] Ver las cartas de organizaciones de la sociedad civil en la página web del Centro de Información sobre Empresas y Derechos Humanos (CIEDH).

C. Una reunión sin precedentes en América Latina y el Caribe

7. Nunca antes en la región se había llevado a cabo un foro sobre empresas y derechos humanos multi-actor de esta magnitud y con el objetivo expreso de avanzar en la implementación de los Principios Rectores. Asistieron aproximadamente 415 personas de 17 países de Latinoamérica y el Caribe y de otros 10 países fuera de la región[c]. De los asistentes, el 41% provino de organizaciones de la sociedad civil, el 28% de empresas y asociaciones industriales, el 12% de gobiernos y el 19% de organismos de las Naciones Unidas, defensorías del pueblo, sindicatos y otras iniciativas regionales y globales. De los 73 panelistas y moderadores que participaron en los paneles del Foro, incluyendo los expertos de los talleres de trabajo y sesiones adjuntas, el 32% provino del sector empresarial, el 23% de la sociedad civil, el 23% de gobiernos nacionales, y el 22% de agencias de Naciones Unidas, otros organismos regionales e internacionales y otras iniciativas de carácter mixto sobre empresas y derechos humanos.

8. El Grupo de Trabajo agradece a los Gobiernos de Australia, el Canadá, Colombia y España por sus contribuciones, y agradece la gestión de la Fundación Ideas para la Paz y de diversas empresas. Todos hicieron posible el evento y las sesiones adjuntas al igual que la participación de representantes de la sociedad civil en el Foro Regional.

II. Tendencias regionales

9. A continuación se describen los tipos de impactos adversos y violaciones de los derechos humanos que suceden en la región y que fueron mencionados en el Foro Regional. También se mencionan medidas e iniciativas que se están dando en la región para hacer frente a los abusos de los derechos humanos, según lo reportado por los participantes al Foro Regional (véase apéndice).

A. Impactos adversos y violaciones de los derechos humanos

10. Participantes en el Foro Regional llamaron la atención sobre los siguientes impactos adversos y violaciones de los derechos humanos que involucran a empresas:

a) Existen impactos laborales adversos en la cadena de valor de empresas textiles y de prendas de vestir tanto de la región como multinacionales, quienes tienen varias capas de subcontratación. En los últimos eslabones de la cadena no se respetan los derechos laborales mínimos y las leyes no contemplan cómo responsabilizar a todas la cadena por estos abusos. En estas cadenas de valor frecuentemente se ven migrantes de países vecinos, que tienden a ser particularmente vulnerables. En la industria de la moda también es frecuente ver trabajadoras con muy bajos salarios;

b) Existen aún casos de trabajo infantil y de violaciones de los derechos laborales en el sector agrícola. Un reto específico que se mencionó con respecto a este y

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www.business-humanrights.org/Links/Repository/1022144 y http://business-humanrights.org/media/documents/escr-net-statement-aug-2013.pdf, y la respuesta del Grupo de Trabajo en http://business-humanrights.org/media/documents/12_09_wg_letter_to_escr_net.pdf.

[c] Alemania, Argentina, Australia, Bolivia (Estado Plurinacional de), Brasil, Canadá, Chile, Colombia, Costa Rica, Dinamarca, Ecuador, España, Estados Unidos de América, Guatemala, Honduras, México, Noruega, Nicaragua, Países Bajos, Panamá, Paraguay, Perú, Reino Unido de Gran Bretaña e Irlanda del Norte, Suiza, Trinidad y Tobago, Uruguay, Venezuela (República Bolivariana de). Ver listado de organizaciones y agencias representadas en www.ohchr.org/Documents/Issues/Business/submissionsColombia/List_of_registered_organisations.pdf.

otros sectores productivos (por ejemplo, construcción y comercio) fue la informalidad en la economía. La informalidad hace que, por ejemplo, los trabajadores no estén amparados por la seguridad social;

c) No todos los proyectos de infraestructura que se hacen en la región, con el apoyo de los gobiernos, llevan a cabo estudios de impactos ambientales y sociales completos siguiendo metodologías compatibles con los derechos humanos. También se presentan casos en los que no se ha efectuado la comunicación apropiada con las comunidades potencialmente afectadas o no se ha respetado la normativa internacional con respecto al principio del consentimiento previo, libre e informado que rige para los pueblos indígenas. Estas fallas limitan las acciones de prevención y mitigación que los proyectos pueden llevar a cabo con respecto a los impactos adversos sobre los derechos humanos;

d) El impacto de los proyectos de gran infraestructura varía. Incluye la deforestación y la contaminación del aire, del suelo o del agua, las cuales luego afectan a la salud de las personas o su posibilidad de acceder a alimentación. Otro efecto es el desplazamiento de personas, al igual que reasentamientos que no se gestionan de acuerdo con los estándares internacionales sobre la materia. Otro tipo de efecto es la dinámica de amenazas, hostigamientos y asesinatos de defensores de los derechos humanos que se oponen a proyectos de infraestructura.

e) Los impactos por la minería y otros proyectos del sector energético suscitan vivos debates en la región. Los debates se centran, entre otros, en los temas siguientes:

i) La distribución de dinero entre los países de la región y los inversores extranjeros;

ii) La distribución de las regalías y los impuestos al interior de los países, entre las instancias nacionales y locales y las trabas para que los dineros se inviertan bien;

iii) Los intereses políticos individuales que pudieran estarse tejiendo alrededor de la aceptación y oposición de operaciones extractivas;

iv) Los impactos ambientales;

v) Los derechos de los pueblos indígenas y el deseo de algunos de obtener condiciones más favorables en los beneficios que se reciben, al igual que el deseo de evitar afectaciones negativas a sus modos de vida y a su cultura;

vi) Fallas en los procesos de consulta y consentimiento previo, libre e informado;

vii) Posibles vínculos entre funcionarios de los gobiernos y las empresas, que resultan en reglamentaciones que desfavorecen los derechos e intereses de las comunidades;

viii) La impunidad de empresas multinacionales frente a casos de violaciones por sus subsidiarias;

ix) Las amenazas a la vida e integridad de los defensores de derechos humanos.

11. Los participantes mencionaron una amplia gama de factores que pueden estar contribuyendo a la ausencia de respuestas adecuadas por parte de los Estados y las empresas para hacer frente a los impactos adversos:

a) No siempre se cuenta marcos regulatorios adecuados, a pesar de los compromisos adquiridos por los países mediante los tratados internacionales en materia de derechos humanos;

b) Existe impunidad frente a casos de violaciones de los derechos humanos de defensores que han sido amenazados o asesinados;

c) No hay adecuada planeación sobre la forma en que se usan y ocupan las tierras tanto en áreas rurales como urbanas. Esto dificulta, por ejemplo, hacer un balance apropiado entre la demanda para la producción agrícola y la producción de minerales y metales, o la demanda simultánea de pequeños y de grandes empresarios;

d) No hay una cultura o reglas de transparencia que animen a que las empresas y los gobiernos brinden información relevante y oportuna sobre las operaciones económicas que licencian, sus impactos y los planes de manejo preliminares a ser consultados con las comunidades;

e) Existen problemas en la interacción de algunas empresas con las comunidades y con los trabajadores, especialmente en contextos que incluyen a pueblos indígenas. Algunas veces, la actitud de las empresas es arrogante y discriminatoria, lo que dificulta que se materialicen procesos de consulta significativos o que se lleguen a resoluciones de disputas efectivas;

f) La sociedad civil recalcó la posible existencia de acciones de *lobby* inadecuadas por parte de empresas sobre los gobiernos que resultan en reglamentación laxa frente a la prevención, mitigación y reparación de impactos adversos;

g) Muchos participantes tanto de la sociedad civil como del empresariado mencionaron la corrupción como un problema especialmente grave y potencialmente relacionado con los patrones de abusos de los derechos humanos.

12. Durante el Foro Regional, el Centro de Información sobre Empresas y Derechos Humanos (CIEDH) circuló una versión preliminar del informe titulado "Empresas y Derechos Humanos en América Latina y el Caribe: panorama sobre los acontecimientos más recientes. Septiembre de 2013"[4]. Este contiene una relación de impactos positivos y negativos de las empresas durante 2012 y 2013. El informe incluye tanto empresas con casa matriz en América Latina y el Caribe, como empresas con operaciones y oficinas en la región y cuya casa matriz se encuentra fuera de ella.

13. Según el estudio, las denuncias más frecuentes en la región se refieren a hostigamientos, amenazas y asesinatos de opositores a los proyectos, incluyendo defensores de derechos humanos. Según varias de las denuncias, en estas acciones estuvieron involucrados miembros de la Fuerza Pública, proveedores de servicios de seguridad privada de las empresas, grupos armados ilegales y miembros de las comunidades que están a favor de los proyectos. Las denuncias también se refieren a efectos sobre los derechos laborales. Se destacan amenazas y despidos de trabajadores sindicalizados, e impactos sobre la salud de trabajadores. También se refieren dichas denuncias a los efectos sobre la salud de las comunidades aledañas. Finalmente, las denuncias mencionan con frecuencia la ausencia de procesos de consulta y consentimiento previos, el acaparamiento de tierras, los desalojos y los desplazamientos forzados.

14. Finalmente, cabe señalar que el espectro de actividades económicas que afecta tanto a pueblos indígenas como a afrodescendientes no se limita al sector petrolero y minero. El informe registra denuncias que se refieren también a proyectos de construcción de infraestructura, plantas hidroeléctricas, y empresas en los sectores textil, agrícola, turístico y del transporte.

[4] Informe disponible en www.business-humanrights.org/media/documents/informe_regional_america_latina_y_el_caribe.pdf.

B. Implementación por los Estados

15. Los diálogos y presentaciones en el Foro Regional mostraron la amplia gama de acciones que los Estados de la región y fuera de ella están tomando y pueden tomar para implementar los Principios Rectores. En parte, la amplia gama de acciones es precisamente uno de los retos de la aplicación de la sección I de los Principios Rectores, que se dirige a los Estados. Representantes de los gobiernos, representantes de la sociedad civil y expertos que asistieron al Foro Regional mencionaron medidas relativas a los siguientes ámbitos, entre otros:

a) El fortalecimiento de la aplicación de la ley en materia laboral y el complemento de la aplicación de la ley con iniciativas público-privadas;

b) La introducción de regulación bancaria para pedir a los bancos que financian a otros sectores, entre ellos el extractivo, que hagan análisis de riesgos e impactos alineados con los Principios Rectores;

c) La participación en iniciativas multi-actor que ayudan a concretar protocolos de acción tanto para los gobiernos como las empresas (por ejemplo en el caso de las Guías Colombia en Seguridad y Derechos Humanos) con el de cumplir la ley y hacer frente a situaciones complejas en el ámbito de la seguridad y sociales;

d) La formulación de planes nacionales de acción;

e) El empoderamiento a las Defensorías del Pueblo para que promocionen, eduquen, diriman conflictos, monitoreen y adjudiquen en esta materia en procesos no judiciales;

f) La introducción de requisitos específicos de debida diligencia y reporte para zonas e industrias donde hay riegos de impactos adversos;

g) La introducción de sanciones administrativas, diferentes a las multas, para aquellas empresas que no cumplen con la ley.

16. También se mencionaron varios desafíos vistos desde la perspectiva de los Estados. Entre ellos están: la politización y polarización alrededor de proyectos económicos específicos; la dificultad de identificar las preocupaciones materiales de las personas cuando hay diversidad de actores con sus propias agendas particulares que no siempre guardan relación con la protección de los derechos humanos de las personas o la solución de problemas; los términos de negocio que los inversionistas extranjeros solicitan, los cuales no siempre están alineados con los Principios Rectores.

17. La cuestión sobre la aplicación extraterritorial de medidas preventivas o punitivas fue abordada por los participantes al Foro Regional. En el diálogo se ventilaron algunos de los retos prácticos relacionados con posibles medidas de esta índole. Por ejemplo, la necesidad de establecer los términos de la cooperación policial y judicial entre las agencias de diferentes países para investigar y adjudicar en casos y la necesidad de tener claridad sobre los términos de extradición de personas.

18. Otro de los grandes desafíos que se señalaron en el Foro Regional se remite a la necesidad de contar con más transparencia en las relaciones entre el Estado y las empresas. En este sentido se subrayó la urgencia de que los procesos que suponen un diálogo entre empresas y Estado, cuando se negocian los términos de la inversión extranjera o los términos de un proyecto específico, puedan ser objeto de conocimiento de la sociedad civil, estén enmarcados en reglas de juego transparentes y se anclen en procesos de rendición de cuentas.

C. Implementación por las empresas

19. Durante el Foro Regional se presentaron varios ejemplos sobre la implementación de los Principios Rectores (véase apéndice).

20. Las empresas que participaron en el evento y otros expertos compartieron información sobre prácticas y retos en todas las áreas de implementación de los Principios Rectores. Dichas áreas de implementación cubren el entrenamiento de administradores superiores y personal, el análisis de impactos sobre las personas y riesgos para la operación derivados de dichos impactos, sistemas gerenciales para asignar responsabilidades y hacerles seguimiento, el manejo de situaciones problemáticas específicas, la interacción con grupos de interés, la comunicación y el reporte, la participación en mecanismos de quejas y la participación en iniciativas multiactores. Las empresas en la región usan herramientas como el Global Reporting Initiative (GRI) y la norma ISO 26000, espacios de intercambio de experiencias como las redes del Pacto Mundial de las Naciones Unidas, y diálogo con sus socios comerciales en la cadena de valor para avanzar en la implementación de los Principios Rectores. Según la información compartida, el nivel de conocimiento e implementación en la región es poco uniforme. Hay empresas con amplio conocimiento en la materia, y otras que apenas comienzan a aprender sobre los Principios Rectores. Por lo general, pareciera que las empresas tratan con mayor facilidad temas relacionados con los derechos de los niños y los derechos laborales, y en cambio enfrentan mayores retos con situaciones que guardan relación con la protección de los consumidores, el uso de la tierra, la vigilancia privada y el respeto por los derechos de los pueblos indígenas.

D. Tendencias en los casos de litigio

21. De acuerdo con la información del CIEDH, durante los últimos años, la mayoría de los litigios sobre empresas y derechos humanos en América Latina y el Caribe ha involucrado al sector extractivo, aunque este no ha sido el único en enfrentar demandas. Algunos casos se refieren a problemas de las empresas con sus prácticas de seguridad. Los litigios involucran disputas o conflicto entre organizaciones de la sociedad civil locales y extranjeras y empresas nacionales y extranjeras, y suelen tener visibilidad en los medios de comunicación.

22. De otra parte, existen investigaciones judiciales en países del Cono Sur que involucran a exfuncionarios de multinacionales por su presunta participación en el secuestro, tortura y desaparición forzada de trabajadores durante las dictaduras militares. Así mismo, altos tribunales del Canadá y el Reino Unido han aceptado procesar casos en sus cortes contra empresas multinacionales acusadas por violaciones de derechos humanos en la región.

23. Varios participantes recalcaron la existencia de barreras para llevar casos a las cortes. Estas se mencionan en la siguiente sección.

E. Mecanismos de reparación eficaces

24. Según el debate que se dio en el Foro Regional, hay varias razones por las cuales amplios sectores de la sociedad civil y los Estados ven el acceso a la reparación como una pieza central del naciente régimen global sobre empresas y derechos humanos: materializa el derecho de las víctimas a la reparación; se hace justicia a través de sanciones a los perpetradores; y se cimienta un desincentivo estructural a la posible mala conducta de las empresas (el efecto disuasorio). Si las empresas saben que la ley prohíbe un impacto determinado y que además de eso se exponen a una consecuencia grave por su

incumplimiento, entonces dejarán de operar con impactos negativos; este es el razonamiento. Existe, por supuesto, un abanico más amplio de incentivos que pueden moldear la conducta de las empresas. La manera como estos incentivos operan y se complementan es objeto de estudio de esta nueva fase de aprendizaje sobre las normas en empresas y derechos humanos. Por ejemplo, en el diálogo que rodea la operación de los puntos de contacto nacional de la Organización de Cooperación y Desarrollo Económicos (OCDE), algunos han planteado que debería haber una consecuencia negativa para aquellas empresas que se nieguen a solucionar sus problemas con comunidades o empleados a través de los servicios de mediación que prestan estas oficinas. Esa consecuencia negativa puede ser, según las organizaciones de la sociedad civil, la suspensión de créditos y apoyo del Estado para la exportación y comercialización internacional.

25. Los obstáculos que enfrentan las víctimas para acceder a la reparación son numerosos y a nivel mundial ya se han documentado extensivamente[e]. En el Foro Regional se mencionaron los siguientes obstáculos para América Latina y el Caribe:

a) Falta de recursos materiales, acceso a conocimiento técnico y a abogados apropiados que igualen las capacidades de las empresas, especialmente cuando se trata de empresas globales;

b) Falta de acceso al material probatorio;

c) Temor a represalias en forma de daños a la reputación;

d) Amenazas a la integridad física propia o de familiares y testigos;

e) Estigmatización en el trabajo;

f) Violación de la integridad física;

g) Corrupción pública y conducta deshonesta de las empresas;

h) Una cultura jurídica formalista;

i) Falta de independencia de los órganos de justicia;

j) Dificultades para acceder a los diversos mecanismos locales e internacionales porque no se conocen bien sus procedimientos o porque acceder a ellos puede ser costoso;

k) Desconocimiento en materia de derechos humanos por parte de las víctimas.

26. El Foro Regional abordó un abanico de opciones judiciales y no judiciales de reparación, tanto a nivel doméstico como a nivel regional y transnacional. En la práctica, todos los tipos de mecanismos han tenido fortalezas y debilidades.

27. El Grupo de Trabajo hizo un llamado a usar estos mecanismos como lo indican los Principios Rectores, es decir, siguiendo los criterios de proceso efectivo y asegurándose que las decisiones de reparación sean compatibles con los derechos humanos. En algunas ocasiones hay énfasis en sanciones que no logran el objetivo de ser disuasivas de futuras conductas empresariales que llevan a impactos adversos o que le apuntan a transformar la cultura corporativa. Por ejemplo, hay sanciones en la forma de multas que no implican mayores consecuencias para las empresas que sistemáticamente tienen impactos negativos. También puede haber procesos de reparación que adoptan la forma de fallos judiciales que dictan compensaciones pero que no exigen cambios relevantes a las empresas o los Estados en cuanto a las prácticas o políticas que causaron las violaciones a los derechos humanos.

[e] Para citar un ejemplo, ver Oxford Pro Bono Publico, Universidad de Oxford, *Obstacles to Justice and Redress for Victims of Corporate Human Rights Abuses*, noviembre de 2008, disponible en www.reports-and-materials.org/Oxford-Pro-Bono-Publico-submission-to-Ruggie-3-Nov-2008.pdf.

También hay abusos de los mecanismos de quejas por parte de algunos usuarios, quienes los abordan como instrumentos para redistribuir la riqueza y no como instrumentos para solucionar problemas y reparar violaciones. Cuando esto sucede, las dinámicas de los mecanismos de quejas se pervierten y las víctimas no obtienen soluciones tangibles a sus problemas.

28. No hay información sistemática sobre los mecanismos de quejas de las empresas y algunos participantes expresaron que dichos mecanismos no pueden funcionar adecuadamente por la asimetría de poder que existe entre las víctimas y las empresas. Para superarla se espera que haya suficiente asistencia técnica a las víctimas para utilizar tanto mecanismos de quejas judiciales como no judiciales. Otros resaltaron que los diferentes mecanismos de resolución de disputas buscan ofrecer a aquellas sociedades y comunidades que lo deseen, la opción de tener procesos de diálogo y reconciliación que lleven a una convivencia pacífica. También se reportó que los mecanismos de quejas no judiciales, por ejemplo a nivel de una empresa, tienen el potencial de nutrir procesos de cambio cultural corporativo alineado con los Principios Rectores.

29. Otra preocupación expresada durante el Foro Regional es que aún no existe claridad sobre la responsabilidad que pudieran tener casas matrices con respecto a las acciones de sus subsidiarias. Una de las razones por las cuales este punto es importante es que las casas matrices tienen la capacidad de moldear los incentivos de sus subsidiarias, y esto debe tenerse en cuenta tanto para la prevención de posibles violaciones de los derechos humanos, como para la mitigación y reparación.

30. Entre las opciones que algunos asistentes al Foro Regional plantearon para mejorar el desempeño de los mecanismos de quejas judiciales y no judiciales, se mencionaron las siguientes:

a) Cuando el impacto o violación sean colectivos, buscar opciones para el litigio colectivo en caso de que se vaya a utilizar la vía judicial. Esto permite maximizar los recursos en favor de las víctimas;

b) En cuanto a soluciones de procesos, se sugiere la creación de fiscalías especializadas, por ejemplo en crímenes ambientales, o la generalización de la inversión de la carga de la prueba y hacer un levantamiento de experiencias estatales no judiciales;

c) Avanzar en la definición sobre responsabilidad criminal corporativa; otros hicieron mención a la necesidad de un tratado amplio que incluya este tema más especificaciones relativas a los derechos humanos para tratados de inversión, contratos Estado-empresa y los sistemas de arbitraje.

31. Durante el Foro Regional, el Grupo de Trabajo anunció que dentro de los proyectos que actualmente apoya de manera prioritaria, está un estudio experto sobre las opciones para superar la barreras prácticas al acceso a la reparación y las opciones para tener un instrumento interestatal que aborde particularmente crímenes de lesa humanidad, crímenes de guerra y otras violaciones graves. La Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos convocó un taller de expertos los días 7 y 8 de octubre de 2013 en Ginebra, cuyos resultados serán el objeto de futuras investigaciones y consultas a lo largo de 2014.

F. El rol de la Comisión Interamericana de Derechos Humanos

32. La Comisión Interamericana de Derechos Humanos ha venido crecientemente abordando casos relacionados con los impactos adversos de operaciones económicas y de conductas de Estados que no logran prevenir impactos adversos por parte de empresas. La Comisión ha emitido en varios casos medidas cautelares para proteger a personas de

impactos del sector extractivo. Las audiencias especiales se presentan como otro mecanismo útil para dirimir conflictos y proteger derechos[f].

33. Entre los problemas más recurrentes identificados por la Comisión en la materia de empresas y derechos humanos se encuentran aquellos relacionados con la tierra (conflictos de tenencia y uso), el desplazamiento, la conflictividad social, la discriminación por razones étnicas o de orientación sexual. Cabe mencionar también la problemática de la protección por parte de la Fuerza Pública a empresas que son objeto de ataques, la cual se puede prestar a excesos en el uso de la fuerza por parte de los agentes de seguridad y complicidad en la violación de derechos humanos por parte de las empresas.

G. Comercio e inversión extranjera

34. Durante el Foro Regional se hizo referencia al aumento de acuerdos de inversión y de comercio, los cuales suscitan interrogantes con respecto a su relación con los Principios Rectores. En ese sentido, se discutió la necesidad de que los acuerdos se refieran de manera más explícita a la obligación de los Estados de proteger a las personas en su jurisdicción frente a los posibles impactos adversos de las empresas en cuanto a los derechos humanos, y a las expectativas que los Estados tienen frente a las empresas que operan amparadas por los tratados de inversión y comercio. Actualmente muy pocos acuerdos se refieren de manera directa a los derechos humanos y a la responsabilidad que compete a las empresas de acuerdo con los Principios Rectores. Ello implica que muy pocas reclamaciones relativas a esta cuestión pueden ser elevadas a los tribunales de arbitraje para que puedan ser dirimidas allí de ser necesario, y que en los contextos en los que se discute la protección de la inversión —un elemento necesario y que se rige por marcos legales internacionales—, no se sopesen las obligaciones de los Estados de proteger a las personas en su jurisdicción.

H. Reportes, medición y auditorías

35. Han surgido diferentes fórmulas de presentación de información por parte de empresas, como una herramienta para incentivar la adopción de la debida diligencia de las empresas, medir su desempeño e introducir correctivos. A nivel global, algunos Estados han estado introduciendo diferentes fórmulas de requisitos de presentación de informes[g]. Algunos han ideado fórmulas que no caben dentro de concepciones clásicas o exclusivas de lo voluntario u obligatorio, sino que son distintas. Por ejemplo, está la regla "Reporte si tiene una política de derechos humanos y diga qué hace. Si no la tiene, explique por qué piensa que no es necesaria". Algunas bolsas de valores también han comenzado a poner como requisito reportes de sostenibilidad que contienen capítulos de derechos humanos.

36. Durante el Foro Regional, el Grupo de Trabajo tuvo oportunidad de escuchar sugerencias e inquietudes desde la región y por parte de actores globales. Estas fueron las diferentes visiones:

a) Algunos expresaron la importancia de alinear el lenguaje y los formatos de reporte para no crear cargas burocráticas innecesarias y costosas. Sobre este punto, el Grupo de Trabajo ha animado la coordinación entre, por ejemplo, el GRI y otros, entre ellos

[f] Ver los temas de la audiencias en www.oas.org/es/cidh/audiencias/topics.aspx?lang=es.

[g] Entre estos están por ejemplo Dinamarca, los Estados Unidos y Francia. Véase también el proyecto legislativo de la Unión Europea donde se establece que las grandes empresas (que suman aproximadamente 18.000) deben reportar sus impactos ambientales, o en caso de no hacerlo, explicar sus razones por las que no lo hicieron. Ver http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/index_en.htm#h2-1.

el proyecto Shift-Mazars, sobre un estándar de elaboración de informes y validación que tome específicamente a los Principios Rectores como referencia;

b) Conforme se avanza en las fórmulas de presentación de informes es importante sentar principios o criterios de recolección de información para asegurarse de que esta sea veraz y equilibrada;

c) Los informes y sistemas de auditorías no deben convertirse en reemplazos de la función de interpretación y desarrollo jurídico de los Principios Rectores, tarea que debe recaer sobre los órganos que tienen autoridad para hacerlo[h];

d) Los reportes públicos por parte de empresas —una medida de transparencia— pueden tener al menos tres tipos de impactos directos e indirectos sobre el grado de implementación de los Principios Rectores por parte de las empresas:

i) Apoyar la rendición de cuentas que hace la sociedad civil;

ii) Informar a los accionistas responsables;

iii) Estimular cambios en los modelos de gestión al interior de las empresas;

e) Son necesarios, según algunos participantes al Foro Regional:

i) El desarrollo de nuevas tecnologías para procesar grandes volúmenes de información y comparar el desempeño de las empresas;

ii) Reglas claras sobre la validación de la información para que ésta sea confiable;

iii) Expectativas claras sobre la debida diligencia y la calidad de información que se levanta en las cadena de valor, especialmente cuando hay más de un nivel de distancia y participantes de la cadena valor pequeños y con capacidades precarias;

iv) Niveles de carga administrativa realistas para las empresas y los funcionarios públicos de la región, especialmente teniendo en cuenta las exigencias de competitividad en el mercado;

v) El desarrollo de estándares globales con respecto a aquellas empresas o instituciones que llevaran a cabo tareas de auditoría y certificación en materia de derechos humanos[i].

37. Desde algunos sectores que asistieron al Foro Regional se expresó la preocupación de que las nuevas auditorías en derechos humanos que están surgiendo en el mundo empresarial se fueran a convertir *de facto* en herramientas de interpretación jurídica. La preocupación radica en los intereses, incentivos y experiencias (o falta de ellas) que pudieran tener los profesionales que trabajan para sociedades de auditoría, los cuales podrían socavar el terreno normativo avanzado en materia de derechos humanos. Para evitar este fenómeno, expertos de la sociedad civil recomendaron fortalecer dentro de las Naciones Unidas y de los Estados —los actores que tienen autoridad— la función de interpretación normativa basada en los Principios Rectores. Esta interpretación debe clarificar qué constituye o no una adecuada implementación de los Principios Rectores, y

[h] Sobre este punto el Grupo de Trabajo ha explicado la naturaleza de su apoyo al proyecto liderado por Shift y Mazars, el cual no pretende desplazar la función interpretativa de los diversos órganos de las Naciones Unidas que están creados para eso, incluyendo al Grupo de Trabajo. Véase el comunicado del Grupo de Trabajo en http://shiftproject.org/sites/default/files/UN%20Working%20Group%20Support%20for%20RAFI.pdf.

[i] Para más información del proyecto Shift-Mazars, ver http://www.business-humanrights.org/Documents/ShiftMazarsDiscussionPaper.

de acuerdo con los marcos normativos vigentes en materia de derechos humanos y los marcos que se desarrollen hacia el futuro, qué constituye un impacto negativo y una violación de los derechos humanos.

I. Derechos de pueblos indígenas y empresas

38. En agosto de 2013, el Grupo de Trabajo distribuyó su informe sobre la implementación de los Principios Rectores en contextos de pueblos indígenas (A/68/279), y en octubre lo presentó a la Asamblea General.

39. En el transcurso del Foro Regional, varios participantes subrayaron que los pueblos indígenas son comunidades que se ven afectadas de forma desproporcionada por actividades económicas, especialmente por aquellas que requieren grandes extensiones de tierras, y que esto se debe a que muchos de los recursos naturales se encuentran en territorios de estas comunidades. Dentro de los impactos se destacan afectaciones al derecho de mantener sus culturas y modelos de desarrollo propios, afectaciones a su soberanía alimentaria, e impactos ambientales en sus territorios.

40. En esta materia se señaló que aunque existen instrumentos y normas nacionales e internacionales para la protección de los derechos de los pueblos indígenas[1], es necesario que se cumplan a cabalidad por parte de los Estados y las empresas. En ese sentido, algunos participantes en el Foro Regional resaltaron que se requieren medidas que aseguren la aplicación y el cumplimiento de los instrumentos internacionales ya existentes. Por ejemplo, hay países en la región en los que aún no se cuenta con una normativa clara sobre la cuestión.

41. Adicionalmente, se llamó la atención sobre la necesidad de entablar un diálogo más equitativo entre empresas y comunidades indígenas, reconociendo que estas comunidades cuentan con un elemento central en la ecuación: la tierra. El tema de la tierra no solo es de suma importancia para la protección y el respeto de los derechos de estas comunidades, también pone sobre la mesa la posibilidad de que ellas adquieran una nueva situación en el campo económico, en tanto pueden convertirse en inversionistas, socios y/o empresarios gracias a la posesión de ese recurso.

42. Participantes del Foro Regional mencionaron que se requiere pasar de relaciones de tipo asistencialista a relaciones entre iguales y socios cuando se trata de la relación entre empresas y pueblos indígenas. Esto conduce a una inquietud con respecto a la manera en que los grupos indígenas podrían convivir con las actividades empresariales reconocidas de interés general o con los intereses de otros grupos de población vulnerables como los campesinos, teniendo en cuenta que no se puede establecer una jerarquía de los derechos proclamados de estos grupos.

J. Roles de los afectados y de las organizaciones de la sociedad civil

43. Los Principios Rectores requieren el poder de la sociedad civil para hacer funcionar la combinación inteligente de medidas que se hacen indispensables para la materialización de dichos Principios. Sin embargo, la sociedad civil (organizaciones sociales) y las víctimas de abusos necesitan recursos para acceder a mecanismos de resolución de conflictos y

[1] Convenio 169 de la Organización Internacional del Trabajo sobre pueblos indígenas y tribales en países independientes, de 1989, y Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas.

litigios, y para formar parte de los procesos de prevención y manejo de impactos. Estos recursos permiten a la sociedad civil equilibrar la balanza de capacidades y de poder.

44. Otra estrategia para equilibrar la balanza es la transparencia. Según participantes en el Foro Regional, es necesario que las empresas revelen oportunamente datos básicos sobre sus reglas de gobierno corporativo, sus propiedades e instalaciones, sus operaciones y los impactos que puedan causar y que causan sus operaciones. Esta información, por ejemplo, podría estar disponible al público, a los accionistas y la sociedad civil abiertamente. Esta información podría ayudar a hacer una rendición de cuentas más precisa.

45. Para las empresas, aún falta mayor conocimiento sobre qué tipo de acciones son aceptadas y resultan eficaces para empoderar a las víctimas. Por ejemplo, cuando las comunidades afectadas hacen parte de procesos de resolución de conflictos o procesos de tratamiento de quejas, las empresas necesitan saber cuál es la forma más adecuada de asistir a las necesidades de conocimiento técnico y asesoría legal por parte de las comunidades. Los Estados también pueden jugar un rol en asistir a las comunidades durante dichos procesos, pero no siempre tienen los recursos para hacerlo en todos los aspectos prácticos.

46. Algunos participantes en el Foro Regional manifestaron su preocupación por la falta de reglas claras, formales e informales, en cuanto a las acciones de la sociedad civil y su interacción con empresas y Estados.

47. Lo anterior plantea una nueva discusión sobre el rol, las responsabilidades y el alcance de la sociedad civil con respecto de los Principios Rectores y su implementación. En ocasiones, la falta de familiaridad de la sociedad civil con los Principios Rectores ha impedido que ésta los utilice como herramientas de acción eficientes para exigir la protección y el respeto de los derechos humanos.

K. Género

48. Durante el Foro Regional se abordó la no discriminación de género y la situación de las mujeres frente a las actividades empresariales. Se destacó la necesidad de entender las posibles diferencias entre las expectativas, aspiraciones y violaciones de los derechos humanos de las mujeres campesinas e indígenas en áreas rurales en contraste con las mujeres profesionales en áreas urbanas.

49. También se mencionaron los posibles vacíos que tienen las políticas públicas y las prácticas empresariales frente a la protección y respeto de los derechos humanos de la comunidad LGBTI, la población mayor y los niños.

III. Las fortalezas y los retos de América Latina y el Caribe sobre la cuestión de empresas y derechos humanos

A. Institucionalidad

50. América Latina y el Caribe tienen fortalezas que se mencionaron durante el Foro Regional y que pueden apoyar la implementación de los Principios Rectores:

a) Los gobiernos tienen importantes capacidades institucionales instaladas en temas de desarrollo, promoción de los derechos humanos y monitoreo y fiscalización, que pueden adaptarse para la implementación de los Principios Rectores;

b) Existe en la región una fuerte tradición filantrópica que, junto con las Redes del Pacto Mundial, puede encaminarse para lograr una mayor alineación con los Principios Rectores;

c) La región ha sido sede de varios pilotos tempranos en materia de empresas y derechos humanos, y varias empresas regionales y globales han ya iniciado la implementación de los Principios Rectores. Comparada con otras regiones, hay mayor conocimiento y sensibilidad del empresariado frente al respeto de los derechos humanos y la debida diligencia que se espera de las empresas;

d) Existe una sociedad civil dinámica con poder de influir e impactar los negocios. Estas fortalezas pueden canalizarse para la generación y ejecución de propuestas y proyectos de política y de regulación, se pueden canalizar ejercicios de rendición de cuentas y monitoreo de los Estados y para la generación de alianzas público-privadas que soporten la implementación de los Principios Rectores.

e) Una buena parte de los mercados de la región están integrados al mercado global, lo cual permite anclar numerosas operaciones en el seno de iniciativas globales de implementación y rendición de cuentas alineadas con los Principios Rectores.

f) La región tiene mercados emergentes y economías formales en crecimiento.

B. Competitividad

51. Un reto específico es cómo lograr la introducción de los Principios Rectores en las políticas públicas sin generar cargas burocráticas que superen las capacidades fiscales de los Estados. Los Estados de América Latina y el Caribe enfrentan múltiples demandas por parte de la sociedad civil y con frecuencia les es difícil atender todas las necesidades. El segundo reto mencionado en el Foro Regional hace referencia al temor por parte de las empresas de perder competitividad en el mercado globalizado, especialmente frente a otras empresas que no implementan los Principios Rectores.

C. Los términos del debate y las percepciones

52. A pesar de los avances en la generación de un estándar mundial común y de niveles básicos de entendimiento compartido entre diferentes grupos de interés sobre la cuestión de empresas y derechos humanos, de acuerdo con las visiones de los participantes al Foro Regional existen impedimentos en América Latina y el Caribe para tener un debate más enfocado y efectivo:

a) En algunas sociedades hay polarización política y ausencia de espacios regulares, formales o informales, para el diálogo multi-actor. En algunos sectores se tiene una concepción reducida de los derechos humanos, la cual se focaliza principalmente en la relación Estado-sociedad civil y los derechos civiles y políticos de la población;

b) En algunos círculos de la sociedad se estigmatiza gravemente a los defensores y activistas de derechos humanos, especialmente en países que han sufrido alta conflictividad social o armada, pero también a personas que trabajan con empresas privadas;

c) Hace falta capacidad técnica tanto en la sociedad civil, como en los gobiernos y en los gremios empresariales sobre el amplio abanico de subtemas técnicos que cubren los Principios Rectores. Tanto la desconfianza en algunas regiones, como las debilidades técnicas, llevan a confusiones conceptuales que no permiten avanzar en la implementación de los Principios Rectores. Por ejemplo, algunos confunden la filantropía empresarial con

los Principios Rectores, y otros creen que es deber legal de las empresas garantizar la realización progresiva de los derechos económicos y sociales de la población;

d) Hay una ausencia de propuestas concretas por parte del sector privado sobre el acceso a la reparación y el tipo de sanciones en las cuales deberían incurrir las empresas que violan los derechos humanos. Muchas empresas sienten que la sociedad no reconoce sus contribuciones positivas. Esta postura, en medio de contextos polarizados, ha hecho que las empresas se involucren menos en la formulación de soluciones para superar la impunidad;

e) No hay suficientes competencias técnicas por parte de la sociedad civil sobre aspectos estratégicos del funcionamiento interno de los sistemas gerenciales de las empresas, sobre el funcionamiento de los mercados y sobre su regulación;

f) No hay suficiente claridad sobre cómo vincular la cuestión de los impactos adversos de las empresas en materia de derechos humanos con las iniciativas para superar la inequidad y promover el desarrollo inclusivo, los cuales enfatizan las alianzas público-privadas. Por ejemplo, los esfuerzos para superar la economía informal en algunos países de la región, los cuales son liderados por especialistas en desarrollo de los gobiernos y las empresas, tienen un impacto positivo sobre la posibilidad de las personas de realizar sus derechos laborales y socioeconómicos. No siempre las redes de sociedad civil involucradas en empresas y derechos humanos interactúan con estas iniciativas.

IV. Conclusiones

53. **El primer Foro Regional de América Latina y el Caribe sobre Empresas y Derechos Humanos evidenció la importancia de tener espacios neutrales para explicar y clarificar el alcance y el funcionamiento de los Principios Rectores.**

54. **Los primeros impactos del Foro Regional ya son tangibles:**

a) Se han empezado a generar y fortalecer redes formales e informales regionales y nacionales para la promoción e implementación de los Principios Rectores en la región, por ejemplo en la Argentina, Chile, Colombia, Costa Rica, Guatemala y el Perú[k];

b) Se ha contribuido a dinamizar el debate en las defensorías del pueblo de la región con respecto a sus roles;

c) Se ha contribuido a dinamizar la gestión de las redes locales del Pacto Mundial en cuanto a la diseminación de los Principios Rectores;

d) Se han fortalecido los contactos con el Sistema Interamericano, llevando a plantear interacciones formales para el 2014 entre el Grupo de Trabajo y la Comisión Interamericana de Derechos Humanos para ahondar sobre las expectativas puntuales que deben tenerse de los Estados y las empresas según los Principios Rectores;

e) Se ha brindado a través de la organización y ejecución del Foro Regional, capacitación técnica a miembros de agencias de las Naciones Unidas que operan en la región y que aún no estaban inmersos en la materia;

f) Se generaron vínculos con los Puntos de Contacto Nacional de la OCDE con sede en América Latina, contribuyendo así al objetivo de convergencia global;

[k] Ver por ejemplo la carta dirigida al Grupo de Trabajo por la organización Cegesti en Costa Rica.

g) Se diseminaron los Principios Rectores a cientos de nuevas audiencias.

55. El Grupo de Trabajo espera que los Estados y empresas que operan en la región, así como los diferentes organismos regionales, avancen de manera más ágil y contundente en la implementación de los Principios Rectores.

56. Las empresas pueden tener impactos positivos. Los Principios Rectores no buscan disminuir la importancia y la necesidad social y económica de que así sea. Sin embargo, como la evidencia lo muestra, hay impactos adversos y violaciones de los derechos humanos que involucran a las empresas. Las empresas pueden causar, contribuir o estar ligadas a abusos y se espera que tanto Estados como empresas tomen acciones de prevención, mitigación y reparación de dichos impactos negativos y que comuniquen su progreso.

Apéndice

Algunas experiencias de implementación de los Principios Rectores compartidas durante el Foro Regional

A. Introduciendo el tema: el rol de las Redes Locales del Pacto Mundial

1. Los vínculos entre empresas y derechos humanos son aún un tema nuevo para muchos actores. Uno de los roles que las redes nacionales del Pacto Mundial cumplen es introducir el tema en redes empresariales interesadas en responsabilidad social empresarial o sostenibilidad.

2. El Pacto Mundial fue lanzado en la Argentina el 23 de abril de 2004 en presencia de autoridades del sistema de las Naciones Unidas y del Gobierno argentino, empresarios y líderes de la sociedad civil. Recientemente, la red local del Pacto Mundial lanzó primero dos líneas de trabajo para promover los derechos humanos e implementar los Principios Rectores: el desarrollo de capacidades en el gobierno nacional y un mapeo de las políticas empresariales. Luego del mapeo se observó que las empresas se centraban sobre todo en acciones filantrópicas cuando pensaban en derechos humanos y se decidió elaborar una guía de implementación de los Principios Rectores: la guía *Promover, respetar y remediar: todos ganamos*. Seguidamente la Red creó el primer grupo de trabajo en empresas y derechos humanos con el fin de ayudar a las empresas de la red local a entender y aplicar los Principios Rectores.

3. La guía fue inicialmente elaborada por dos consultores, pero luego fue consultada y revisada con representantes del sector público en el Ministerio de Trabajo, Empleo y Seguridad Social de la Argentina y con distintos representantes multisectoriales incluyendo líderes empresariales y de la sociedad civil. Este ejercicio luego dio paso a la formación y el debate sobre el rol de las empresas y los mecanismos de quejas y acceso a la justicia.

4. Durante el Foro Regional, una importante empresa de seguros, el Grupo Sancor, compartió su experiencia en el uso de la guía. Tomándola como referencia práctica, desarrolló protocolos para la debida diligencia, matrices de riesgo, guías para entender la complementariedad con otros códigos como la norma ISO 26000, el GRI y las Guías de la Organización de Cooperación y Desarrollo Económicos (OCDE) para empresas multinacionales. Este trabajo les ha permitido identificar retos en el área laboral, por ejemplo, relacionados con acoso. Recientemente esta misma empresa ha sido reconocida como número 1 en la clasificación de empresas líderes en sustentabilidad por la Cámara de Comercio de los Estados Unidos en la Argentina (AmCham)[1].

B. Iniciativas multiactores adaptadas al contexto local: las Guías Colombia en derechos humanos y derecho internacional humanitario

5. A comienzos del año 2000, algunas empresas extractivas multinacionales que operaban en Colombia empezaron a implementar los Principios Voluntarios de Seguridad y Derechos Humanos, que daban guías prácticas sobre cómo manejar las políticas de seguridad, las relaciones con empresas de vigilancia privada y las relaciones con la Fuerza Pública. Empresas de otros sectores económicos (entre ellos Nestlé, Coca-Cola e Indupalma) vieron la utilidad de esta guía y exploraron junto con la Fundación Ideas para la Paz (un centro de pensamiento en Colombia que había abierto una línea de trabajo sobre

[1] Véase https://www.gruposancorseguros.com/web/ES/amcham2013.aspx.

empresas, conflicto y paz) la posibilidad de adaptar los Principios Voluntarios a sus retos. Algunos eran parecidos a los de las extractivas, pero otros eran distintos. El contexto de violencia y polarización, como resultado del conflicto armado, era por ejemplo el mismo. Sus empleados, contratistas y las personas en su cadena de valor, especialmente aquellos que eran miembros de sindicatos, estaban siendo amenazados y asesinados. Estas empresas, en cambio, no tenían grandes acuerdos con la Fuerza Pública.

6. Tras casi dos años de negociaciones entre un grupo pequeños de empresas, ONG, representantes sindicales y el Gobierno de Colombia, facilitadas por Ideas para la Paz, se lanzaron las Guías Colombia en el año 2006. Luego, el grupo decidió seguir adaptando la iniciativa para abordar temas más allá de los retos de seguridad, como por ejemplo, el desplazamiento interno, retos relacionados con los derechos sobre la tierra y el problema de la usurpación, un espectro más amplio de temas laborales, el desplazamiento interno y los retos para las empresas, entre otros. En el 2008, la iniciativa decidió entonces tomar como referencia la guía *Proteger, respetar y remediar: todos ganamos* porque le brindaba justo el marco amplio que buscaba para abordar problemas de derechos humanos más allá de las relaciones con la seguridad privada y pública.

7. Actualmente los miembros de Guías Colombia son empresas públicas y privadas del sector energético, la agroindustria, las telecomunicaciones, servicios e industria, la Asociación Nacional de Empresarios de Colombia (ANDI), así como ONG y agencias del Gobierno. Uno de los retos más importantes de la iniciativa ha sido la polarización frente al tema de los derechos humanos, la falta de confianza entre los actores en Colombia y la falta de recursos de la sociedad civil para poder participar en la iniciativa. Los miembros de la iniciativa han invertido mucho tiempo en la construcción de confianza entre las partes. El futuro de la iniciativa contempla diferentes dimensiones orientadas a desarrollar herramientas más vinculantes, llevar los compromisos a un nivel más local y difundir los compromisos a través de la cadena de valor de las empresas.

C. Estándares del sector extractivo

8. Uno de los sectores sobre los cuales hay frecuentes quejas de impactos sobre los derechos humanos y gran polarización en América Latina y el Caribe es el extractivo. La minería y el sector energético han estado involucrados en conflictos sociales relacionados con temas laborales, de tierras, con seguridad, de daños ambientales y de violación a los derechos de los pueblos indígenas. Dos gremios globales, uno sobre minería y uno sobre petróleo, han diseñado y promocionado toda una serie de estándares en estos temas, los cuales han influido y guiado a algunas grandes multinacionales extractivas que operan en América Latina y el Caribe. Estos son el ICMM e IPIECA por sus siglas en inglés. Durante el Foro Regional, varias empresas pertenecientes a estos gremios presentaron sus sistemas de gestión y sus retos en la implementación de los Principios Rectores. Entre ellas estuvieron Codelco, Repsol y Rio Tinto. Las empresas compartieron sus modelos de gestión y compartieron algunos de sus retos.

9. El desafío para el sector, según lo discutido en el Foro Regional, es demostrar los resultados individuales de cada operación, generar mayor confianza con las comunidades, lidiar con las brechas legislativas de cada país donde operan, y diseminar los estándares a empresas que no hacen parte de estos gremios.

D. Desde la promoción hacia el respeto de los derechos humanos

10. "Aquí estoy y actúo" es una estrategia de la multinacional española Telefónica para combatir el trabajo infantil. Empezó como un programa de promoción de derechos del niño por la fundación de la empresa. En 2011, tras el lanzamiento de los Principios Rectores, la empresa en Colombia hizo un análisis de impactos potenciales sobre los derechos humanos y se dio cuenta de que sus operaciones podrían estar impactando a los niños al menos de

dos maneras principales: posible trabajo infantil en su cadena de valor y posible exposición de los niños a abusos a través de los contenidos proyectados por los aparatos móviles como los teléfonos celulares. A raíz de esto, Telefónica decidió combinar su gestión de impactos con su vocación social y tomar el liderazgo en la creación de una herramienta para empresas que les permitiera sensibilizarse y aprender sobre el problema del trabajo infantil, realizar una identificación de impactos y formular las bases para una estrategia de manejo. Para ello tomó como referentes los Principios Rectores, los convenios de la Organización Internacional del Trabajo (OIT) y el trabajo realizado por el Fondo de las Naciones Unidas para la Infancia (UNICEF). La ambición de la unidad de negocios local era generar una herramienta en español, adecuada para la problemática latinoamericana. Un reto fue hacerse campo en el espacio de política pública mundial.

11. A nivel global la OIT, el UNICEF y el Pacto Mundial ya habían iniciado la elaboración de guías para empresas, pero esta buscaba generar tanto el entendimiento como la acción apropiada para la región. En octubre de 2012, Telefónica junto con la red local del Pacto Mundial, lanzó en Colombia una "Guía Metodológica para la Evaluación y Gestión de los Impactos del Trabajo Infantil en los Negocios" de la mano del UNICEF, Save the Children y otras organizaciones. En la misma línea del trabajo realizado por Telefónica, otras empresas con presencia en América Latina como el Grupo El Comercio, Holcim y Lafarge, trabajan en el desarrollo de alianzas y estrategias para la erradicación del trabajo infantil. Desde el sector de turismo se han promovido otras iniciativas para la identificación y denuncias de signos de prostitución infantil.

E. Alianzas entre ONG, gobierno y organismos internacionales: el caso de Ethos en Brasil sobre inclusión social y el trabajo decente

12. Ethos es una ONG brasilera que empezó a trabajar hace décadas en responsabilidad social empresarial y políticas públicas ambiental y laboral. Su entrada en los temas de derechos humanos empezó con estas dos cuestiones. Después de 2011, a raíz de los Principios Rectores, Ethos creó un grupo de trabajo empresarial enfocado sobre la inclusión y el trabajo decente.

13. En el período comprendido entre 2013 y 2017, el trabajo desarrollado por esta organización se centrará en los avances alcanzados por el grupo de trabajo sobre empresas y derechos humanos, creado para atender temáticas relacionadas con prácticas empresariales y políticas públicas en torno a la inclusión y el trabajo decente. Su trabajo se enfoca en el desarrollo de indicadores, concienciación dentro de las empresas sobre focos de dominación, objetivos numéricos de inclusión, censo de diversidad y acción afirmativa y trabajo con bancos y gobiernos locales para la creación de un conjunto de recomendaciones que permitan mejorar la condición de créditos para empresas que hacen censos de la diversidad y acción afirmativa.

14. En la línea de lo público, la organización se encuentra trabajando en la creación de incentivos fiscales para empresas que trabajan en diversidad y acción afirmativa, así como foros con enfoque en igualdad e inclusión para la industria de servicios. Adicionalmente, cuenta con un enfoque investigativo que les ha permitido el desarrollo de metodologías de trabajo en censos y cuestiones de inclusión, con miras a crear bases de datos que en temas laborales permitan atender las afectaciones identificadas con relación al trabajo esclavo o la situación de los migrantes, entre otros.

15. Entre los proyectos, Ethos destaca el estudio "El Perfil social, racial y de género de las 500 mayores empresas de Brasil y sus acciones afirmativas", investigación histórica cuantitativa que se encuentra en su 14ª edición; y el Pacto Nacional por la Erradicación del Trabajo Esclavo, una iniciativa conjunta entre la OIT, Ethos y Reporter Brasil.

16. El Pacto Nacional apoyó la creación de la Lista sucia del trabajo esclavo, una herramienta importante, respetada y utilizada por el mercado y hoy gestionada por el Ministerio de Trabajo y la Secretaría de Derechos Humanos del Gobierno federal en el Brasil. De la mano de lo propuesto por el Pacto Nacional, empresas como Frito-Lay, algunas textiles y de ropa (New Balance y Nike, entre otras), y del sector bancario han avanzado en el trabajo para la promoción de la inclusión en temas de género y situación de discapacidad.

F. Organización de Cooperación y Desarrollo Económicos

17. Las Líneas Directrices de la OCDE para Empresas Multinacionales son un instrumento con recomendaciones y expectativas para los gobiernos en cuanto las empresas y su conducta en temas esenciales de la responsabilidad social empresarial, entre ellos los derechos humanos. De hecho, las Directrices fueron el primer instrumento internacional en integrar el respeto a los derechos humanos tal como se establece en los Principios Rectores. En este contexto, son el único instrumento existente sobre responsabilidad social empresarial multilateralmente acordado por los gobiernos adherentes, quienes se han comprometido a promoverlas y a establecer Puntos Nacionales de Contacto (PNC), como instancia de implementación de las mismas.

18. Los PNC se encargan de divulgar y promocionar el instrumento (las Directrices) y de atender solicitudes relacionadas con el posible incumplimiento en la aplicación de las Directrices por parte de una empresa multinacional. Esta segunda función de los PNC hace de las Directrices el único instrumento internacional con un mecanismo incorporado de quejas que puede ser empleado por cualquier interesado que se sienta afectado por la conducta de una empresa multinacional. Este mecanismo de queja busca generar un foro de discusión para que las partes (grupos de interés y empresas) puedan dar solución a sus conflictos.

19. En el mundo hay 45 países que han adoptado las Directrices, de los cuales siete son de América Latina: Argentina, Brasil, Chile, Colombia, Costa Rica, México y Perú. En América Latina los PNC tienden a estar ubicados dentro del gobierno nacional, usualmente en los ministerios de comercio, relaciones exteriores o economía. Algunos de los PNC cuentan con comités consultivos de los grupos de interés, como instancias de diálogo que promueven la efectiva implementación de la herramienta[m].

20. Buena parte de los casos, llamados "instancias específicas", analizados por los PNC latinoamericanos están relacionados con los derechos humanos y la comunicación con los grupos de interés, generalmente en el sector extractivo. También es frecuente encontrar instancias específicas que analizan cuestiones relacionadas con condiciones laborales y sindicales.

21. Conscientes de las particularidades regionales, los PNC latinoamericanos han venido trabajando en desarrollar una fuerte asociación que les permita fortalecer la implementación de las Directrices. En este contexto, tuvo lugar la primera Sesión de Aprendizaje entre Pares y Generación de Capacidades en los PNC latinoamericanos en octubre de 2013 en Bogotá, organizada por el PNC de Colombia con apoyo del PNC del Reino Unido, en la cual participaron los PNC de Chile, el Perú, México y el Brasil.

22. Los PNC latinoamericanos pretenden abordar como región los retos relacionados con la mediación. Si bien la recomendación de la OCDE es que la etapa de mediación sea adelantada por un mediador tercero experto, lo cierto es que la mayoría de PNC de la región no cuentan con recursos para hacerlo. Teniendo en cuenta que la mediación es parte

[m] Tal es el caso de Chile y Colombia.

fundamental del éxito de la herramienta, se hace necesario aunar esfuerzos para generar capacidades a los PNC que tienen que mediar casos directamente.

G. Regulación de las entidades bancarias para reducir los impactos de la minería

23. Los conflictos mineros en el Perú llevaron a la Superintendencia de Banca, Seguros y AFP a proponer una nueva regulación bancaria que obliga a los bancos a establecer si sus clientes en el sector minero han hecho la debida diligencia en derechos humanos. La razón que animó esta decisión fue la conexión entre el riesgo financiero y la conflictividad que se daba alrededor de las quejas comunitarias por los impactos adversos de las mineras.

24. Los impactos de dichos conflictos se extendían siempre hacia las comunidades y terminaban afectando todas las actividades económicas que giraban alrededor de la mina, como los servicios (transporte, hotelería, restaurantes, etc.). Cuando el conflicto se incrementaba, las personas se iban de la zona y los negocios locales se quedaban sin ingresos. Esto afectaba a su capacidad de pago a los bancos. Los bancos preveían este tipo de situaciones mediante provisiones que buscan contrarrestar el impago pero esto estaba generando nuevas cargas a los servicios mediante un aumento en el cobro de la tasa de interés. Con el objetivo de reducir la probabilidad de los conflictos, en lugar de reaccionar a sus consecuencias, la Superintendencia de Banca, Seguros y AFP decidió proponer la nueva regulación orientada hacia los bancos y otras entidades financieras.

H. Implementación en la cadena de valor

25. Otro ejemplo de cómo las empresas han aterrizado los Principios Rectores en su gestión es el caso de Coca-Cola que, además de comprometerse con el respeto de los derechos humanos, ha desarrollado una serie de iniciativas orientadas a la puesta en prácticas de esta política. Una de estas iniciativas es la política para proveedores y Grupos de Embotelladores Independientes, que promueve las prácticas responsables en el lugar de trabajo, propendiendo por el cumplimiento de las leyes laborales y el respeto del medio ambiente.